

**REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. §1.378(e)  
ON DECISION REFUSING  
PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE  
FEE IN AN EXPIRED PATENT (37 C.F.R. 1.378(b))**

Patent Number: 6,603,052

Application Number: 09/865,822

Issue Date: 08/05/2003

Filing Date: 05/25/2001

**SMALL ENTITY**

Patentee claims, or has previously claimed, small entity status. See 37 C.F.R. §1.27.

**FEES**

Included with this Request is the \$400.00 Petition Fee due pursuant to 37 C.F.R. §1.17(f).

**MANNER OF PAYMENT**

Please Charge Deposit Account No. 233000 for the sum of \$400.00.

**AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY**

The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to Deposit Account No. 233000.

**OVERPAYMENT**

As to any overpayment made, please Credit to Deposit Account No. 233000.

PETITIONER REQUESTS RECONSIDERATION ON THE DECISION REFUSING  
EARLIER PETITION TO ACCEPT DELAYED PAYMENT OF THE MAINTENANCE FEE  
AND ALSO REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE  
FEE BE ACCEPTED AND THE PATENT REINSTATED.

*Kurt A. Summe*  
Signature of Petitioner(s)

11-19-10

Date

Kurt A. Summe, Attorney of Record  
Typed or printed name(s)

36023  
Registration Number, if applicable

Wood, Herron & Evans, LLP,  
Firm Name

513-241-2324

441 Vine Street, 2700 Carew Tower  
Address

Cincinnati, OH 45202  
Address

ENCLOSURES:

1. Copy of Original Statement of Showing that the Delay in Timely Payment of the Maintenance Fee for the Expired Patent Was Unavoidable Pursuant to 37 C.F.R. §1.378(b) filed June 29, 2010.
2. Copy of Original Declaration of John E. Davis filed June 29, 2010.
3. Copy of Original Declaration of Gretchen J. Franck filed June 29, 2010.
4. Copy of Original Declaration of Kurt A. Summe filed June 29, 2010.
5. Copy of Original Petition to Accept Unavoidably Delayed Payment of Maintenance Fee in an Expired Patent (37 C.F.R. §1.378(b)) filed June 29, 2010.
6. Supplemental Statement of Showing that the Delay in Timely Payment of the Maintenance Fee for the Expired Patent Was Unavoidable Pursuant to 37 C.F.R. §1.378(b).

7. Supplemental Declaration of John E. Davis.
8. Declaration of Laura Brumbaugh.
9. Declaration of Timothy P. Klonne.

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Signature of Petitioner(s)

11-19-10

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Date

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Kurt A. Summe, Attorney of Record

Typed or printed name(s)

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36023

Registration Number, if applicable

Document #1289201

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio  
45202

June 24, 2010

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF JOHN E. DAVIS

John E. Davis, being first duly cautioned and sworn, states as follows:

1. My name is John E. Davis. I am one of the inventors in U.S. Patent No. 6,603,052. The other inventor is Mr. Timothy P. Klonne, who was a partner with me in an Ohio Corporation called TollamCo, Corp. That corporation did business at 7195 East Kemper Road and 7131 East Kemper Road in Cincinnati, Ohio 45209.

2. Due to some restructuring and management resignations at a company called Newport Converting in July, 2009, I began working and helping part-time at the Newport Converting office. Newport Converting is owned by my daughter. On September 22, 2009, while digging through some files, I uncovered the original Patent Certificate for U.S. Patent No. 6,603,052 and

associated documents, including the cover letter sent with the Patent. That is the first time that I had seen the original Patent document and an accompanying letter and the first time that I knew that I had the Patent in my possession. I had not had a chance to read the original '052 Patent document, determine its status or manage any dates or maintenance fees associated therewith, even though at that time in September 2009 I had a general understanding that there was a patent associated with the subject matter set forth in the '052 Patent.

3. On September 22, 2009, I called Mr. Kurt A. Summe at Wood, Herron and Evans, LLP., and we discussed the maintenance fee issue. I did not recall paying any maintenance fee. Upon determining that the maintenance fee had not been paid, I indicated that I would like to try to pay the maintenance fee late and keep the Patent alive. We discussed what steps might be taken to send in the delayed payment of the maintenance fee.

4. On September 25, 2009, Mr. Summe and I again spoke and discussed that, because of the time that had elapsed, my Petition had to be accompanied by a significant showing that the delayed payment was unavoidable, and would require very specific facts regarding the Patent, the steps taken regarding handling that Patent once it was received, and any steps taken with respect to calendaring and paying the maintenance fees. We discussed that the burden regarding the unavoidable situation was a high burden, and that we would have to construct the facts surrounding the Patent,

maintenance, and late payment of the maintenance fee. Furthermore, Mr. Summe and I discussed the ownership of the Patent, and the involvement of the other inventor, Mr. Timothy P. Klonne.

5. I had a stroke in 2003 around the time of the Patent issuance. I am still suffering from the effects of the 2003 stroke, and thus, it was necessary for me to go back and spend time to reconstruct facts surrounding the maintenance fee issue. I had no immediate knowledge at the time regarding any steps taken regarding the '052 Patent or ownership, because I had just discovered the patent. In September, 2009, I began in the arduous process of trying to reconstruct the facts surrounding the '052 Patent and the maintenance fee issue, and to also determine the ownership status of the Patent as it applied to the other inventor, Mr. Klonne. I have diligently continued that task from September 2009 to this day, which has been difficult given my current mental and physical condition, as well as the time that has elapsed, and the locations and conditions of the various files that I needed to review. I have engaged the help of my wife and my daughter to assist me where possible. I have also tried to make appointments with various of the doctors involved, and to have them access their medical records so that I might determine the time frames of various health events, and how that has interplayed with my mental state and the timeline in the delayed payment of the maintenance fees. I have continued such efforts, working with Mr. Summe, and, although the process has been slow and tedious given the medical hurdles, I have gathered the necessary information to establish

the truly unavoidable nature of the delayed payment of the maintenance fees. In a call with Mr. Summe on May 6, 2010, I concluded that I had exhausted that process and we would proceed and finalize and file the petition with the facts that we have as is.

6. Initially, it was apparently our desire to assign the Patent to the corporate entity. However, from a review of the TollamCo, Corp. files and my notes, I could not determine that Mr. Klonne and I ever followed through on that formal Assignment, and thus the Patent Application and issued Patent were initially owned by the two of us as individual inventors. This was later confirmed when I found notes indicating that Mr. Klonne had assigned his rights in the Patent to me when he did not want to pay his portion of the Patent issuance fees.

7. On or around May 1, 2003, the doors to TollamCo, Corp. at the East Kemper Road, Cincinnati, Ohio address were closed due to business conditions. From approximately May, 2003 to November, 2003, liquidation proceedings progressed for TollamCo, Corp.

8. On May 7, 2003, shortly before payment of the Issue Fee in the '052 Patent was apparently due, I suffered a significant stroke. Pursuant to that stroke, I have suffered significant short-term memory loss, and at the time, was incapacitated in my day-to-day functions. As a result, I was also not able to work any longer at the business that had been associated with TollamCo, Corp., and

subsequent business endeavors. I had significant short-term memory loss, a degraded ability in any facial recognition, and a significantly-slowed thought process. At the time, I therefore quit working day-to-day, and was confined to my Son's home at 804 Maple Avenue, Newport, Kentucky 41071.

9. I remained incapacitated from the May 7, 2003 stroke, until approximately October, 2003, when I began to try to recapture some normalcy in my life. I do not have any specific memory of that time frame involving the closing of TollamCo, Corp., and the issuance of the '052 Patent. In order to try to piece together the events and facts surrounding the '052 Patent, its ownership, the issuance, and the delayed payment of the maintenance fees, I have had to try to gather all possible archived corporate and personal records from that time frame. This has been a significant task due to my mental and physical incapacitation. Furthermore, since I do not have any direct mental recollection of the time frame regarding the issuance of the '052 Patent, or any issues of maintenance fees, I have had to try to recreate, from written documents and any recollections, the facts surrounding this issue.

10. This task has been more difficult and slow due to the fact that I am suffering from heart disease. Prior to the time of the stroke, in July, 2002, I was diagnosed with heart disease. The heart disease has become progressively worse. In early 2007, I began to have life-threatening rapid and irregular heartbeats, and specifically on May 3, 2007, I began having a rapid and irregular

heartbeat that could not be controlled. I have since had three heart surgeries to address my heart issues. On January 7, 2007, I had the first heart surgery, which was an unsuccessful catheter ablation to control the rapid heartbeat. On December 7, 2007, I had another heart surgery to control the rapid heartbeat. That surgery was partially successful, and the rapid heartbeat could then be controlled with heavy medication. On October 20, 2008, I had another heart surgery to implant an internal cardiac defibrillator and pacing device. I have been stabilized with heavy medications and a significantly-restricted physical activity level. As such, I have had a difficult and time-consuming process in finding, reading, and reviewing various documents to try to put together in memory and facts regarding the timeline surrounding the '052 Patent and the issue of a delayed payment of the maintenance fees.

11. I have gone back carefully through the records that are over five years old, including corporate records and personal records that have been scattered around at various locations. I am in possession of the defunct TollamCo, Corp. records, as apparently I had agreed with Mr. Klonne, my business partner and the other inventor in the '052 Patent, that I would keep the TollamCo, Corp. records. Those records are scattered around in various locations due to the fact that the original company, TollamCo, Corp., was closed, and the remaining portion and files of that company has been moved to various different locations.

12. I have gone back and tried to put together a day-by-day or week-by-week account of what occurred around the time of the Patent issuance. Since suffering the stroke, I have fluctuated over the years to being able to remember for less than one minute, to be able to retain memory for up to at least a waking day. To this day, I still do not hold many thoughts overnight, and thus, often must refresh my memory each day to some degree. While I have gotten somewhat better over time, I have still very highly-dependent on written notes, my calendar, and other outside people, such as my wife and daughter, and/or various services to maintain any organization or order in my daily life.

13. Because of my restricted physical activity level, it has been a slow and arduous process in retrieving and accessing the various documents to put together the facts for this Petition. My daughter and wife have assisted in that regard. However, I still must review the documents, determine which ones are relevant, and also study those documents to refresh my memory and try to have some understanding of the time frames at issue. Furthermore, I have had to meet with various of my doctors, including my cardiologist, neurologist, and general physician, in order to review their records and medical notations and discern the time frames associated with my medical problems and try and determine if it had any bearing on the issue of the maintenance fee or the Patent and my general condition around the time of the Patent issuance. Recently, I

was able to meet with my physician, and review the time frames associated with the original stroke that occurred around the time of the Patent issuance and my condition at that time.

14. During the process of closing TollamCo, Corp., the corporate records were moved to the Blue Horizon Inc office at 1024 Saratoga Street, Newport, KY 41071 from the East Kemper Road, Cincinnati, Ohio address. Some time around the time frame of August 8, 2003, the original Patent was received at 223 Congress Street, New Richmond, Ohio 45157, which is the address of my daughter who was assisting me with my financial affairs at that time. At that time, that was also the address of the corporate office for Blue Horizon, Inc., which was the corporate entity carrying on a portion of the original TollamCo, Corp. business, and was a company managed by my daughter. At that time, I was still incapacitated from day-to-day business activities because of the stroke and was having difficulty with my memory. I was not actively working. Someone at the Blue Horizon, Inc. address of 223 Congress Street, New Richmond, Ohio 45157 received the Patent, and apparently, it was placed into files at the Newport KY office. My daughter presented the return postcard to me along with other documents for signature and also apparently sent back the postcard indicating that the Patent was received. I was not cognizant of the original Patent at that time due to the stroke, nor do I remember seeing or reading the original '052 Patent. I cannot recall having filed any Patent document

away. I do not have a recollection of handling the original Patent, and do not know who did or placed it into the archived TollamCo, Corp. files. It remained there until I discovered it.

15. As a result, I would not have had a suitable opportunity to note the issue of maintenance fees being due or to docket such dates in my files or my calendar at the time the Patent was issued. In fact, because of the stroke, I was struggling with just functioning and remembering in a day-to-day fashion in the August, 2003 time frame.

16. Also, because TollamCo, Corp. was out of business around the time the '052 Patent issued, no one affiliated with the corporation would have been responsible for attending to the Patent or to the maintenance fees and dates. There was no internal system or management maintained for TollamCo, Corp. There was no corporate docketing system. I therefore, did not have a chance, either individually or in a corporate capacity, to attend to the '052 Patent and its maintenance or have someone do so.

17. From my review of those files, it appears that the TollamCo, Corp. archive files were then later moved to the warehouse of another corporate entity owned by my daughter, named Newport Converting at 1024 Saratoga Street, Newport, KY 41071. My TollamCo, Corp. files and personal files remained in the Newport Converting facility, as I was not working at that time. The original Patent

and supporting cover letter and documentation remained in the files at Newport Converting from that time on until I randomly came across the files and the Patent document when later working at Newport Converting in 2009 and going through some old files.

18. Since the bankruptcy, Mr. Klonne has had nothing to do with the old business or business remnants of the defunct TollamCo, Corp. My recent efforts to contact Mr. Klonne and get any information from Mr. Klonne have failed. I have continued to review the corporate documents and files to determine any role of Mr. Klonne with respect to the '052 Patent.

19. In my review of the TollamCo, Corp. documents and personal papers prior to the issuance of the '052 Patent and forward to approximately the August, 2003 time frame, I was not able to locate any formal corporate Assignment document that was signed wherein myself and Mr. Klonne assigned our Patent rights to TollamCo, Corp.

20. Through the review of files, however, I did find a note that apparently I had placed in my personal files regarding a telephone conversation with Mr. Klonne on or around August 14, 2003. I do not remember the phone call. The note is dated August 14, 2003. From that note, attached as Exhibit A, I was able to determine that I was apparently going to pay the issuance fee or had apparently paid the original issuance fee myself with my own funds with the

thought of having Mr. Klonne repay one-half, as Mr. Klonne was a partner with me in the defunct TollamCo, Corp. and would also own the Patent with me. I must have spoken with Mr. Klonne with some information regarding paying the fee or finalizing the business of TollamCo, Corp. I cannot recall any details around this specific communication with Mr. Klonne in that time frame to my knowledge. I recall I was generally making some efforts in that time frame with Mr. Klonne to close the business to the best that I could and tracking down money.

21. From my note, Mr. Klonne apparently indicated to me that he was not interested in the '052 Patent, and would not participate in paying the Issue Fee so that a Patent could issue. At that time, Mr. Klonne verbally assigned any rights or interest he had in the '052 Patent to me if I wanted to pursue the issue. I apparently was not aware that any Patent had issued at that time as I had not seen the original '052 Patent and did not reference a Patent in the note, but I must have been prompted by my daughter about paying issue fees or having upcoming fees to pay at that time.

22. Therefore, because of this Assignment, Mr. Klonne would have no ownership in the Patent, from what I can determine. I am the sole owner of the '052 Patent. I have not discussed or corresponded with Mr. Klonne regarding maintaining the '052 Patent or any other actions taken with respect to the Patent.

23. I was not aware of the original '052 Patent document and the concept of maintaining that Patent until I discovered the original '052 Patent and the letter from Mr. Summe that was with it. I did not have the reasonable opportunity to even set up any calendar or system to remind me to pay the maintenance fees or to have others such as my wife or daughter help me in that regard. Therefore, there was no such calendar or system for the '052 Patent.

24. Until approximately the date of May 30, 2006, I received mail sent to TollamCo, Corp. at the East Kemper Road Cincinnati address in order to wrap up the business of TollamCo, Corp. but then received no mail thereafter for that address.

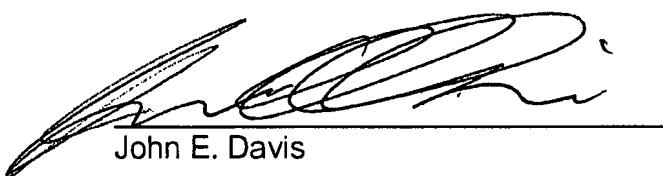
25. I did not receive any letters from Mr. Summe or Wood Herron & Evans regarding dates or deadlines to pay the maintenance fees. Therefore, I could not reasonably take any steps to pay the maintenance fee through Wood, Herron & Evans. Since I do not have any other Patents, I was not in contact with Wood Herron & Evans until the time of discovering the original Patent certificate on September 22, 2009. I have not received any other reminder letters from any other entity or firm regarding the maintenance of the '052 Patent.

26. I own this single Patent. This was the first maintenance fee that I would have to pay. I had never owned a Patent before or paid maintenance fees before on the '052 Patent or any Patent. I have not pursued other Patents and thus have no ongoing business relationship with Wood Herron & Evans or other Patent firms in that regard. As a consequence, I did not have any reasonable chance of paying the maintenance fee, and the delayed payment could not be reasonably avoided.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.

June 25, 2010  
Date

  
John E. Davis

Patent notes

8/14/03

Called Tim Klonne today re patent issuing.

He expressed no interest in pursuing the patent and did not want to participate in paying the issuance fees.

He verbally assigned his interest in the patent to me should I want to pursue it.

JD

**EXHIBIT A**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

June 29, 2010

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

U.S. Patent No. 6,603,052

**STATEMENT OF SHOWING THAT THE DELAY IN TIMELY PAYMENT OF THE  
MAINTENANCE FEE FOR THE EXPIRED PATENT WAS UNAVOIDABLE,  
PURSUANT TO 37C.F.R. §1.378(b)**

U.S. Patent No. 6,603,052 issued on August 5, 2003. It was originally set to expire on May 25, 2021. The first maintenance fee for the '052 Patent was due on February 5, 2007. That maintenance fee was not paid at that time by the owner of the Patent. On September 22, 2009, one of the inventors and the owner, John E. Davis, contacted the law firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202, and spoke with the undersigned, Mr. Kurt A. Summe, regarding the '052 Patent. Mr. Davis indicated that on September 22, 2009, he had just pulled out of a file the original '052 Patent, as well as a letter sent by Wood, Herron & Evans accompanying the original '052 Patent since it had been originally received from Wood, Herron & Evans.

That was the first time that Mr. Davis recalls seeing the original Patent or any accompanying correspondence regarding the Patent. Mr. Davis then noted the language regarding payment of the maintenance fees from a letter from Mr. Summe with the Patent. Mr. Davis did not pay the maintenance fee. Mr. Summe advised Mr. Davis in the telephone call that the maintenance fee had not been paid. Wood, Herron & Evans had not arranged for payment of the maintenance fee absent communications with the Patent owner or any instructions to do so from the owner of the Patent, and thus, the '052 Patent was expired for non-payment of maintenance fees.

Mr. Davis indicated that he wanted to revive the Patent and pay the maintenance fee due. In reviewing the issuance date, the maintenance fee date, and the current date of September 22, 2009, it was concluded that, for revival of the '052 Patent in acceptance of a delayed payment of the maintenance fee to reinstate the '052 Patent, a sufficient showing would have to be made that the delayed payment was unavoidable. On September 25, 2009, Mr. Summe again spoke with Mr. Davis and noted that Mr. Davis was going to have to investigate the facts regarding the owner of the Patent, the actions of the owner, and provide information surrounding the '052 Patent, the maintenance fees, and other issues in order to determine that the delay of the payment was unavoidable. Mr. Summe noted it was not sufficient to simply pay the maintenance fee and any grantable Petition would require such a showing that the delay was unavoidable.

At that time, Mr. Davis had no recollection of any facts surrounding the original Patent and the maintenance fee issues, as he had suffered a stroke around the time the '052 Patent issued. He still suffers from effects of that stroke and memory issues along

with significant heart failure health issues. As set forth in the attached supporting Declaration of Mr. John E. Davis, the tasks of recollecting and determining the string of events has proven to be a somewhat arduous and drawn-out process as the stroke suffered by Mr. Davis was a significant stroke, which has impaired not only his memory with respect to the facts surrounding the time of the issuance of the '052 Patent in August, 2005, but also still continues to impair his memory and day-to-day functioning involving events and details. Furthermore, around the middle of 2006, Mr. Davis began having heart problems, which became severe in early, 2007. Since that time, he has had three heart surgeries, and has been stabilized with heavy medications and a much-restricted physical activity level. He is currently suffering from heart failure.

As such, while Mr. Davis has worked as diligently as possible to locate and go through various files in numerous different locations to try to reconstruct the facts, it has taken a significant amount of time from his initial discovery of the original Patent on September 22, 2009 to obtain as many facts as possible surrounding the unavoidable circumstances of the delayed or late payment of the first maintenance fee for setting forth a sufficient showing. He has little or no recollection of facts surrounding the original issuance of the '052 Patent, has had to find or otherwise locate and go through all personal files and corporate files from that time frame, and is severely limited in his daily physical exertion due to his heart issues. Mr. Davis has spent the past months trying to slowly piece together the facts surrounding the '052 Patent, the ownership of the Patent, any involvement of the other inventor Mr. Klonne, and maintenance fee issues. This task has taken considerable time due to his health and loss of memory. On May 6, 2010, after those significant efforts and discussions with Mr. Summe, Mr.

Davis concluded that he had exhausted the majority of those efforts in piecing together the facts and chronology and was not aware of any further documents or records he could review or avenues he could pursue in determining any additional helpful facts surrounding this issue. In speaking with Mr. Summe, a decision was made to file this Petition with the facts as were determined and those are enclosed herein in this Showing. The Petition is thus, filed promptly upon the exhaustion of the process on May 6, 2010 that was necessary to file the Petition and provide the proper showing along with payment of the first maintenance fee.

Initially, the '052 Patent, which was co-owned by Mr. Davis and Mr. Tim Klonne as the co-inventors, was to be assigned to a corporate entity. That apparently never occurred. That corporate entity was dissolved around the time of the Patent issuance. Through the review of files as noted further below, Mr. Davis was not able to uncover any executed Assignment document to the former corporate entity TollamCo, Corp. No assignment to TollamCo, Corp. was recorded at the U.S. Patent and Trademark Office regarding the '052 Patent. It initially appeared that the '052 Patent was owned individually by the two named inventors, Mr. John E. Davis and Mr. Timothy P. Klonne.

Mr. Summe discussed the issue of efforts made by the two inventors, Mr. Davis and Mr. Klonne to pay the maintenance fee, and indicated that, to establish the unavoidable nature of the delayed payment of the maintenance fee, the records needed to be further examined to determine what efforts were taken by the two inventors individually for payment of the maintenance fee. Because of his loss of memory, Mr. Davis has continued to try to contact Mr. Klonne, who could not be contacted, or would not respond. However, through further searching and reviewing of the corporate

records, Mr. Davis was able to determine that he is the sole owner of the '052 Patent through and Assignment. Accordingly, Mr. Davis was the only entity, corporate or individual, who was responsible for payment of the maintenance fees for the '052 Patent.

When the original '052 Patent was sent to Mr. Davis, it was sent to an address other than the corporate address for TollamCo, Corp. where Mr. Davis was receiving assistance. At that time, the original Patent was sent to Mr. Davis, who was somewhat mentally and physically incapacitated due to the stroke, and was not working at TollamCo, Corp. The invention was sent to an address, at 223 Congress Street, New Richmond, OH 45205, which is the location of Mr. Davis' daughter. At that time, the original '052 Patent was apparently placed in a file drawer at another location by someone other than Mr. Davis, with some other files of TollamCo, Corp. that were located at that site, and remained with those files, hidden from Mr. Davis' sight and memory until they were discovered September 22, 2009. Mr. Davis indicates that, up to the point of discovering the original Patent document, he was generally knowledgeable that there was a Patent. Mr. Davis does not recall having seen or read neither the original '052 Patent document noting payment of maintenance fees, nor the letter from Wood, Herron & Evans regarding such maintenance fees. Nor was he aware that they were buried in the archived corporate documents. The original documents had gone directly to a file when Mr. Davis was incapacitated.

Accordingly, as the owner of the '052 Patent, Mr. Davis hereby Petitions for acceptance of a delayed payment of the maintenance fee to reinstate U.S. Patent No. 6,603,052 as the lack of payment was truly unavoidable. Further details and support from the attached Declarations of Mr. Davis, Mr. Kurt A. Summe, and Ms. Gretchen Franck, the Docketing Administrator of Wood, Herron & Evans, are set forth below in a more detailed and chronological fashion below.

### Chronology of Events

On May 25, 2001, John E. Davis and Timothy P. Klonne applied for a Patent for a Fluid Absorbent Article for Surgical Use. Mr. Davis and Mr. Klonne were partners in an Ohio corporation named TollamCo, Corp. doing business at 7195 East Kemper Road and 7131 East Kemper Road in Cincinnati, OH 45209. (Davis Declaration Paragraph 1.) The Patent application was filed and prosecuted by Mr. Kurt A. Summe of the Firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202 (Summe Declaration Paragraph 9).

During prosecution, on September 24, 2001, Mr. Summe received a note and corporation documents from Mr. Davis indicating that the two inventors wished to assign the Patent to TollamCo, Corp. (Summe Declaration Paragraph 10). On September 27 2001, Mr. Summe forwarded an Assignment to Mr. Davis at TollamCo, Corp. (Summe Declaration Paragraph 10). On November 26, 2001, in further correspondence to Mr. Davis and Mr. Klonne, Mr. Summe indicated he had not yet received the executed Assignment (Summe Declaration Paragraph 10). No executed Assignment document

was received by Mr. Summe from Mr. Davis and Mr. Klonne that assigned their rights to TollamCo, Corp. No Assignment document was recorded at the U.S. Patent Office by Mr. Summe regarding the '052 Patent. (Summe Declaration Paragraph 10).

The Application proceeded through prosecution and was formally allowed pursuant to a Notice of Allowance dated March 11, 2003. The Issue Fee was paid on June 6, 2003, and a Patent issued as U.S. Patent No. 6,603,052 on August 5, 2003 ('052 Patent History).

On May 7, 2003, shortly before payment of the Issue Fee in the '052 Patent, Mr. Davis suffered a significant stroke (Davis Declaration Paragraph 8). Pursuant to that stroke, Mr. Davis lost his short-term memory, was incapacitated in his day-to-day functions and was not able to work any longer. In addition to the short-term memory loss, a degraded ability in facial recognition, and a significantly slowed thought process. He quit working day-to-day in the business of TollamCo, Corp. at that time, and was confined to his son's home at 804 Maple Avenue, Newport, Kentucky 41071. (Davis Declaration Paragraph 8.)

Earlier, on or around May 1, 2003, the doors to TollamCo, Corp. at East Kemper Road, Cincinnati, were closed. From approximately May, 2003 to November, 2003, liquidation progressed for TollamCo, Corp. (Davis Declaration Paragraph 7.) Mr. Davis remained incapacitated from the May 7, 2003 stroke until approximately October, 2003 (Davis Declaration Paragraph 9).

Pursuant to the business liquidation, it was apparently agreed between Mr. Davis and Mr. Klonne that corporate records of TollamCo, Corp. would be maintained by Mr. Davis because Mr. Davis has those archived records (Davis Declaration Paragraph 11).

The corporate records were moved to Blue Horizon, Inc. at 1024 Saratoga Street, Newport, KY 41071, which was a company owned by Mr. Davis' daughter (Davis Declaration Paragraph 14).

On August 8, 2003, Mr. Summe forwarded to Mr. Davis, at the 223 Congress Street, New Richmond, OH 45205 address, the original '052 Patent. The 223 Congress Street address is the address of Mr. Davis' daughter, who was assisting him (Davis Declaration Paragraph 14). The letter noted that the '052 Patent would expire May 25, 2021, and that maintenance fees were due 3½, 7½, and 11½ years from the issued date of the '052 Patent. (Summe Declaration Paragraph 13.) The letter also indicated that Wood, Herron & Evans would attempt to notify the Patent owner on the 3<sup>rd</sup>, 7<sup>th</sup>, and 11<sup>th</sup> anniversaries as a reminder of the need to pay the maintenance fees and the amount of the fees (Summe Declaration Paragraph 13).

Someone at the Blue Horizon, Inc. address of 223 Congress Street, New Richmond, OH 45205, received the original Patent, and put it into the files at the Blue Horizon, Inc. address in Newport, KY on Mr. Davis' behalf, as Mr. Davis was not working at that time. Mr. Davis does not recall getting, seeing, or reading the original Patent. He does not recall any of the circumstances regarding the original Patent document being filed into archived corporate files (Davis Declaration Paragraph 14.)

The original Patent Certificate and cover letter from Mr. Summe remained in the files from that time, unseen by Mr. Davis. Ultimately, those files were moved to the facilities of Newport Converting, which is another corporate entity owned by Mr. Davis' daughter. The hidden original Patent and letter remained there.

Since Mr. Davis did not receive and file the original Patent and, given his condition, he did not have a reasonable opportunity to even note the issue of maintenance fees being due or to docket such dates in files, or in a business calendar at the time the Patent was issued. He was struggling with just day-to-day functioning. (Davis Declaration Paragraph 15.)

Also, because the TollamCo, Corp. was out of the business, no one affiliated with the corporation would have had the responsibility for attending to the Patent or to the maintenance fees and dates. There was no corporate docketing system maintained for the maintenance of intellectual property like the '052 Patent. Mr. Davis, therefore, did not have a chance, either individually or in a corporate capacity, to attend to the '052 Patent and its maintenance or have someone do so. (Davis Declaration Paragraph 16.)

On September 22, 2009, Mr. Davis randomly discovered the original Patent Certificate and the cover letter when going through old files. At that time, the efforts began to pay the maintenance fee with a Petition and to try to establish the facts surrounding the late maintenance fee, and Mr. Davis' efforts in that regard so that a suitable and grantable Petition might be made setting forth the unavoidable situation regarding the late payment of the maintenance fees.

Upon calling Mr. Summe on September 22, 2009, Mr. Summe indicated that he would obtain the file history associated with the '052 Patent (Summe Declaration Paragraph 5). At that time, Mr. Summe obtained copy of the '052 Patent, and looked at the issue to calculate the first maintenance fee due date of February 5, 2007 (Summe Declaration Paragraph 5). It was then determined that a six-month grace period was available taking the date of the first maintenance fee payment out to August 5, 2007. In

reviewing 37 C.F.R. §1.378(b) and Section 2590 in the Manual of Patent Examination Procedure (MPEP) regarding the late payment of maintenance fees, Mr. Summe determined that, as of September 22, 2009, Mr. Davis was beyond the twenty-four months following the six-month grace period for the '052 Patent in which to file a Petition to Accept an Unintentionally Delayed Payment of the First Maintenance Fee. (Summe Declaration Paragraph 5.) Mr. Summe then advised Mr. Davis that the maintenance fee could not just be paid late and that it would be necessary for Mr. Davis to provide facts regarding how the delayed payment was unavoidable, given the situation surrounding that issue.

On September 25, 2009, Mr. Summe contacted Mr. Davis and discussed on the phone the "unavoidable" standard under which the Petition must be filed, and Mr. Davis then began to work in trying to gather the facts surrounding the Patent, the two inventors, the TollamCo, Corp., the location of the original Patent and the issue of the maintenance fees (Summe Declaration Paragraph 6). To the date of filing this Petition, Mr. Summe has worked with Mr. Davis in the arduous and difficult task in trying to determine the various facts surrounding the delayed payment of the maintenance fee (Davis Declaration Paragraph 4)/(Summe Declaration Paragraph 6). This task has taken a significant amount of time because of the mental and physical incapacitation of Mr. Davis in being able to remember any facts associated with the time frame of the issuance of the Patent and the deadline for paying the first maintenance fee (Davis Declaration Paragraphs 5, 8, 13).

Essentially, Mr. Davis has had to try to find and then go back carefully through records that are over five years old and scattered around at various corporate locations to try to piece together, to the best of his ability, what occurred. Since suffering his stroke in May of 2003, Mr. Davis has worked to go from remember for less than one minute to retaining memory for up to at least a waking day. (Davis Declaration Paragraphs 10-12.) To this day, Mr. Davis does not generally hold overnight thoughts, and therefore has to refresh his memory each day (Davis Declaration Paragraph 12). Mr. Davis is still highly-dependent upon written notes, his calendar, and other outside people and/or services to maintain any organization or order in his daily life (Davis Declaration Paragraph 12). Furthermore, Mr. Davis suffers from significant heart problems.

More specifically, in 2002, Mr. Davis was diagnosed with heart disease that progressed. In early 2007, Mr. Davis' heart disease became severe and in May, 2007, he suffered a rapid and irregular heartbeat that could not be controlled. (Davis Declaration Paragraph 10.) He has since had three heart surgeries. On January 7, 2007, he had the first heart surgery, which was an unsuccessful catheter ablation to control the rapid heartbeat. On December 7, 2007, he had another heart surgery to control the rapid heartbeat. On October 20, 2008, he had his third heart surgery for to implant an internal cardiac defibrillator and pacing device. He is suffering from heart failure and has been stabilized with heavy medications and a significantly-restricted physical activity level. (Davis Declaration Paragraph 10.)

Therefore, Mr. Davis has had a difficult time in accessing and reviewing the various documents to put together the time line and facts surrounding the '052 Patent and maintenance fees. Mr. Davis' daughter and wife have assisted in this regard; however, it is necessary for Mr. Davis to indicate that the documents are relevant, and also to review those documents to refresh his memory and have some understanding of the time frames at issue. (Davis Declaration Paragraph 13.) Furthermore, it has been necessary for Mr. Davis to meet with several doctors, including his cardiologist, neurologist, and general physician, in order to review their various records and discern the time frames associated with his various medical problems and his condition around the time of the issuance of the Patent (Davis Declaration Paragraph 13).

Mr. Tim Klonne is listed as an inventor on the Patent. In that role, he would originally be an owner of the Patent. Therefore, Mr. Davis was asked to try and discern the current relation of Mr. Klonne with the '052 Patent and to determine whether he had taken any reasonable steps to pay the maintenance fees. (Summe Declaration Paragraph 8.) Mr. Summe did not record any Assignment for Mr. Davis and Mr. Klonne, and the Patent Office records did not indicate any corporation ownership of the '052 Patent. (Summe Declaration Paragraphs 7, 10).

Since the bankruptcy, Mr. Klonne has had nothing to do with the old business or business remnants of the defunct TollamCo, Corp. Efforts by Mr. Davis to get information from Mr. Klonne have failed. Mr. Davis therefore reviewed the corporate documents and files to determine the role of Mr. Klonne with the Patent. (Davis Declaration Paragraph 18.)

In the extensive review of those files and this issue of Mr. Klonne around the time frame of the prosecution and issuance of the '052 Patent, Mr. Davis was not able to locate any executed corporate Assignment document wherein Mr. Davis and Mr. Klonne assigned their rights to TollamCo, Corp (Davis Declaration Paragraph 19).

Through the review process Mr. Davis found a note he had earlier placed in some files about a telephone conversation with Mr. Klonne. The note is dated August 14, 2003. (Davis Declaration Paragraph 21.) Mr. Davis does not remember the phone call (Davis Declaration Paragraph 20). From that note, Mr. Davis had apparently paid the original Issue Fee or was going to pay the Issue Fee with the thought of having Mr. Klonne pay one-half, as Mr. Klonne was a partner in the TollamCo, Corp. and the Patent. Mr. Davis must have spoken with Mr. Klonne regarding the fee or finalizing the business of TollamCo., Corp (Davis Declaration Paragraph 20). Mr. Klonne apparently indicated that he was not interested in the '052 Patent, and would not participate in paying the Issue Fee. Mr. Klonne verbally assigned any rights or interest he had in the '052 Patent to me. Therefore, Mr. Klonne would have no ownership in the Patent. (Davis Declaration Paragraphs 20-22.)

Therefore, John Davis is the sole owner of U.S. Patent No. 6,603,052. The other inventor, Mr. Klonne, would not have had any duty or obligation to address any maintenance fee issues with respect to the Patent. Therefore, Mr. Klonne would not have thought that it was necessary for him to take any reasonable action or to engage with Mr. Davis regarding the '052 Patent or maintaining the Patent. Accordingly, any action or inaction by the other inventor, Mr. Klonne, would be irrelevant in this regard, with respect to the unavoidability of the late payment of maintenance fees.

As Mr. Davis was not aware of the original Patent document or the correspondence therewith regarding maintenance fees since they were buried in archived corporate files, he did not know such maintenance fees were to be paid (Davis Declaration Paragraph 23). He would, therefore, not have known to take any reasonable steps to pay the maintenance fee.

The law firm of Wood, Herron & Evans offers the service of assisting Patent owners in the payment of maintenance fees on Patents if the owners of a Patent so desire (Franck Declaration Paragraph 3). Various of the clients of Wood, Herron & Evans handle maintenance fees in different ways. Some clients pay their own maintenance fees, some clients contact Wood, Herron & Evans to assist in paying the fees, and some clients have other firms handle the payment of their maintenance fees. (Franck Declaration Paragraph 5.)

With respect to the payment of the 4 year maintenance fees for USA Patent 6,603,052, Wood Herron & Evans sent an initial reminder letter on October 24, 2006 to the corporation, TollamCo, Corp. asking for instructions from the Patent owner (Franck Declaration Paragraph 3).

At the time of the sending of this letter, our internal computer records indicated their corporate address was the E. Kemper Road, Cincinnati address and the letter was sent to that address (Franck Declaration Paragraph 3).

The letter contained information concerning the payment of maintenance fees. The initial letter was not returned to Wood, Herron & Evans by the USPS as undeliverable, and Wood, Herron & Evans heard nothing further from Mr. Davis, Mr. Klonne, or TollamCo, Corp. (Franck Declaration Paragraph 3.) In the letter, patent

owners are asked to indicate whether or not they wish Wood Herron & Evans to handle the payment of the maintenance fees. Instructions are requested as often Patent owners choose to handle the payment of these maintenance fees directly with the U.S. Patent and Trademark Office in order to save money. (Franck Declaration Paragraph 4.)

Mr. Davis did not receive the October 2006 letter (Davis Declaration Paragraph 25). Therefore, Mr. Davis, as the sole owner of the Patent, could not provide instructions because he did not know such instructions were requested.

When instructions from the Mr. Davis, Mr. Klonne, or TollamCo, Corp were never received in conjunction with the letter dated October 24, 2006, another letter was sent dated February 9, 2007. This letter was sent via certified U.S. mail because there was no ongoing contact with the either Mr. Davis, Mr. Klonne, or TollamCo, Corp regarding any ongoing legal matters or the payment of maintenance fees after the issuance of this Patent. (Franck Declaration Paragraph 5.) Wood, Herron & Evans indicated in that February 9, 2007 letter that they would not pay the maintenance fees unless they received explicit instructions from the client to do so. The letter dated February 9, 2007 was returned marked by the USPS as undeliverable/unable to forward. As a result of not having instructions to pay the first maintenance fees, the fees were not paid. (Franck Declaration Paragraphs 5-6.)

Mr. Davis did not receive the February 2007 letter either (Davis Declaration Paragraph 25). Therefore, Mr. Davis, as the sole owner of the Patent, would not have had any reason at that point to take reasonable steps toward payment of the maintenance fee.

Accordingly, because of the facts surrounding the original issuance of the Patent and the stroke of Mr. Davis, the sole owner of that '052 Patent, Mr. Davis did not and indeed could not know that maintenance fees were due for that Patent. He therefore could not reasonably have been expected to create a calendar or docket at that time for the future maintenance fee deadlines or to take other steps regarding the payment of the maintenance fee. Mr. Davis could not do so as he was not even aware of the Patent document or the correspondence associated therewith when the Patent was originally sent. He did not recall seeing the original Patent document until long after the Patent was issued. Since he apparently never handled the original Patent and it was filed away without his knowledge, he would not have known to even look for such a Patent document or to review that Patent document or to consider the issue of maintenance fees.

There was no TollamCo corporate entity that Mr. Davis could have reasonably relied upon to calendar or docket the deadlines associated with the payment of maintenance fees for the '052 Patent or any intellectual property. The corporate entity was gone. Mr. Klonne had no involvement in the Patent or any ownership therein.

Mr. Davis owns a single Patent. This was the first maintenance fee. He had never owned a Patent before or paid maintenance fees before on the '052 Patent or any Patent. (Davis Declaration Paragraph 26.) Mr. Davis has not pursued other patents, and thus, had no ongoing business relationship with Wood Herron & Evans or other Patent firms (Davis Declaration Paragraph 26). He did not receive any correspondence

from Wood, Herron & Evans or any other firm to further provide any knowledge, guidance or reminder to Mr. Davis regarding the payment of maintenance fees (Davis Declaration Paragraph 26).

Mr. Davis relies significantly upon other people and calendars in his daily life. Because he was not aware of the original Patent and the maintenance fee issue, he did not have a reasonable opportunity to calendar the necessary dates, nor have someone close to him, such as his wife or daughter, to calendar those dates to remind him. When the time to pay the first maintenance fee arose, Mr. Davis had no reasonable chance to even take any steps to pay that fee. Therefore, missing the original deadline for payment of the first maintenance fee and the delay in timely payment of the maintenance fee could not be avoided. Under the circumstances, Mr. Davis' actions are as reasonable as can be expected given his lack of knowledge of the Patent and the maintenance fee issues. He apparently did not see or handle the original Patent document and it was filed away without his knowledge into archived files of a corporate entity that no longer existed. His frail mental capacity at the time and continuing effects of his stroke and other health issues have only lessened Mr. Davis' chances of having taken steps to pay the maintenance fee.

This Petition is filed promptly after Mr. Davis had completed the arduous task of piecing together facts, physical documents and a factual and mental timeline of what occurred in this process. As the unavoidably-delayed payment of the maintenance fee required an indication of such facts as noted herein

regarding the circumstances surrounding the late payment of the maintenance fee, such an arduous task and the time associate therewith were necessary for putting together this showing for the purposes of a grantable Petition under 37 C.F.R. §1.378(b).

Applicant is submitting the fee due for this Petition and the maintenance fees. If any additional fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



---

Kurt A. Summe  
Registration No. 36023

Wood, Herron & Evans, L.L.P.  
2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202-2917  
(513) 231-2324 (Phone)  
(513) 241-6234 (Fax)  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

June 29, 2010

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF GRETCHEN J. FRANCK

Gretchen J. Franck, being first duly cautioned and sworn, states as follows:

1. My name is Gretchen J. Franck, and I am the Senior Intellectual Property Paralegal and Docketing Administrator for the law firm of Wood, Herron, and Evans.
2. This Declaration serves as a timeline of events relative to our Firm's attempt to contact the corporate entity, TollamCo, Corp. with respect to the payment of the 4 year maintenance fees for U.S. Patent 6,603,052.
3. Our Firm sent an initial reminder letter on October 24, 2006 to Mr. John Davis at the corporation, TollamCo, Corp. At the time of the sending of this letter, our internal computer records indicated that their corporate address was 7195 E. Kemper Road, Cincinnati, Ohio 45249, and the letter was sent to that address. This letter contained information concerning services we can provide, if desired, for handling the payment of maintenance fees. It asks for instructions from the Patent Owner. The

initial letter was not returned to our Firm by the United States Postal Service as undeliverable, and we heard nothing further from Mr. Davis, Mr. Klonne, or TollamCo, Corp. in response to the letter.

4. Based on the language in the letter, patent owners are to indicate whether or not they wish our Firm to handle the payment of the maintenance fees. Absent an ongoing agreement with a patent owner, we do not automatically pay maintenance fees because many patent owners choose to handle the payment of these maintenance fees directly with the USPTO in order to save money. Some clients pay their own maintenance fees, some clients contact Wood, Herron & Evans to assist in paying the fees, and some clients have other firms or entities handle the payment of maintenance fees.

5. When instructions from the Patent owner for U.S. Patent No. 6,603,052 were never received in conjunction with our letter dated October 24, 2006, another letter was sent dated February 9, 2007. Wood, Herron & Evans did not have any ongoing business relationship with TollamCo, Corp., Mr. Davis, or Mr. Klonne at that time. The February, 2007 letter was sent via certified U.S. mail because we also did not have any ongoing contact with Mr. Davis, Mr. Klonne, or TollamCo, Corp. The '052 Patent is the only Patent property that was held by Mr. Davis or TollamCo, Corp. in our files. We did not have any standing instructions from Mr. Davis, Mr. Klonne, or TollamCo, Corp. regarding any ongoing legal matters or the payment of maintenance fees after the issuance of this Patent. We indicated in the certified letter that we would not pay the maintenance fees unless we received explicit instructions from the client to do so. A copy of this letter is attached as Exhibit A.

6. The letter dated February 9, 2007 was returned to our Firm marked by the United States Postal Service as undeliverable/unable to forward. A copy of this envelope is attached as Exhibit B. As a result of not having instructions to pay the first maintenance fee, and not hearing from Mr. Davis, Mr. Klonne, or TollamCo, Corp., no arrangements were made by Wood, Herron & Evans to have the fee paid.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any Patent issued thereon.

Further Declarant sayeth naught.

6-29-2010  
Date

Gretchen J. Franck  
Gretchen J. Franck

1/27/2007

# WOOD, HERRON & EVANS, L.L.P.

BRUCE TITTEL  
DAVID S. STALLARD  
J. ROBERT CHAMBERS  
GREGORY J. LUNN  
KURT L. GROSSMAN  
CLEMENT H. LUKEN, JR.  
THOMAS J. BURGER  
GREGORY F. AHRENS  
WAYNE L. JACOBS  
KURT A. SUMME  
KEVIN G. ROONEY  
KEITH R. HAUPPT  
THEODORE R. REMAKLUS  
THOMAS W. HUMPHREY  
SCOTT A. STINEBRUNER  
DAVID H. BRINKMAN  
BEVERLY A. LYMAN, PH.D.  
KRISTI L. DAVIDSON  
KATHRYN E. SMITH  
P. ANDREW BLATT, PH.D.  
DAVID E. JEFFERIES

2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917

TELEPHONE: 513-241-2324  
FACSIMILE: 513-241-6234  
WEBSITE: [www.whepatent.com](http://www.whepatent.com)

PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968  
TRUMAN A. HERRON 1935-1976  
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
C. RICHARD EBY

WILLIAM R. ALLEN, PH.D.  
JOHN PAUL DAVIS  
DOUGLAS A. SCHOLER  
BRETT A. SCHATZ  
DAVID W. DORTON  
SARAH OTTE GRABER  
STEVEN W. BENINTENDI, PH.D.  
RANDALL S. JACKSON, JR.  
CARL J. BRAUCH  
ADAM R. WEEKS  
CHARLES R. FIGER

OF COUNSEL  
JOHN D. POFFENBERGER  
DAVID J. JOSEPHIC  
DONALD F. FREI  
THOMAS W. FLYNN  
J. DWIGHT POFFENBERGER, JR.  
BRADLEY D. BECK

February 9, 2007

Mr. John Davis  
TollamCo. Corp.  
7195 E. Kemper Road  
Cincinnati, OH 45249

Certified

Dear John:

Attached is a printout showing your annuity falling due on patent property during the 1<sup>st</sup> quarter of 2007. This printout provides the current tax cost and the expiration year of the patent property. Please indicate whether or not you wish the property to be maintained for the current year by CIRCLING "Pay" or "Remove" opposite each case shown on the printout. In the event you indicate "Remove", the patent may become irrevocably abandoned.

For U.S. patents, the patent entity status is indicated on the printout along with an informational sheet defining the qualifications for small entity status. It is IMPERATIVE that you read the informational sheet and indicate whether the owner of the patent is listed correctly as a "large" or "small" entity. Please note that the payment of a U.S. maintenance fee based upon an incorrect entity status may provide an infringer with an intervening rights defense.

It is important that a copy of the printouts with your instructions be returned to us as soon as possible. For any U.S. patents, please also send to us the verified and signed entity status sheet attached to the U.S. printout. Since no instructions have been received to date, the application will be allowed to go abandoned unless instructed otherwise by February 23, 2007. I have added the late fees to the total amount due on the reminder/renewal notice attached. If we do not receive your instructions and total payment, we will NOT pay the fee.

Should you have any questions regarding the printouts, please contact Ms. Debra Wade, our Intellectual Property Paralegal. However, in the event that you have questions concerning the importance of the property and the need to renew, please contact me directly.

Very truly yours,

*Debra Wade*  
for Kurt A. Summe  
Kurt A. Summe

KAS:ds  
enclosures

EXHIBIT A

## REMINDER / RENEWAL NOTICE

Wood, Herron & Evans, L.L.P.

The following cases are due for renewal by the date indicated. Please enter your instructions to pay (circle PAY) or remove (circle REMOVE) where shown below and return this reminder or a copy thereof to us in good time before the due date. Your renewal instructions should be accompanied by a remittance unless alternate arrangements have been agreed.

Date  
8/7/2006

Records for Client: TollamCo		Total Tax:	\$
United States	215/2007	John E. Davis	
Entity: Small	46445	Fluid Absorbent Article for Surgical Use	
09/08/55, 822	5/25/2021	Client Reference:	
6,603,052			623

## 1 Records for Client: TollamCo

## SMALL ENTITY QUALIFICATIONS

Small Entity Status is defined in the U.S. patent rules as:

"any business concern as defined by the regulations of the Small Business Administration in 13 CFR 121.1301 through 121.1350, which define a small business concern as one whose number of employees, including those of its affiliates, does not exceed 500 persons and which has not assigned, granted, conveyed, or licensed, and is under no obligation under contract or law to assign, grant, convey or license, any rights in the invention to any person who could not be classified as an independent inventor if that person had made the invention, or to any concern which would not qualify as a small business concern or a non-profit organization under this section"

I have read the above statement and I verify that entity status indicated for the patent listed on the attached reminder is correct.

---

Signature

---

Date

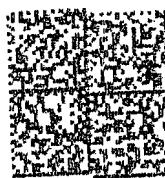
NOTE: IF THE ENTITY STATUS FOR THE PATENT ON THE ATTACHED  
REMINDER IS NOT CORRECT, PLEASE NOTIFY US IMMEDIATELY IN  
ORDER FOR US TO PREPARE THE APPROPRIATE DOCUMENTS

452020291775  
4520202917

WOOD, HERRON & EVANS, LLP  
2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917



049J82030797  
\$ 04.640  
02/09/2007  
Mailed From 45202  
US POSTAGE



A  INSUFFICIENT ADDRESS  
C  ATTEMPTED ADDRESS  
S  NO SUCH NUMBER KNOWN  
NOT DELIVERABLE/STREET  
UNABLE TO FORWARD  OTHER

25 02/17/07  
NIXIE 450 1 RETURN TO SENDER  
NOT DELIVERABLE TO AS ADDRESSED  
FORWARD \*0315-01214-09-45  
BC: 452020291775  
4520202917  
4520202917

EXHIBIT B

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

June 29, 2010

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF KURT A. SUMME

Kurt A. Summe, being first duly cautioned and sworn, states as follows:

1. My name is Kurt A. Summe. I am an attorney in the law firm of Wood, Herron & Evans. I worked with the TollamCo, Corp. and the inventors in obtaining U.S. Patent No. 6,603,052, which issued on August 5, 2003.
2. On September 22, 2009, one of the inventors and the owner of the '052 Patent, John E. Davis, contacted the law firm of Wood, Herron & Evans, 441 Vine Street, 2700 Carew Tower, Cincinnati, OH 45202, and I spoke with Mr. Davis regarding the '052 Patent. Mr. Davis indicated that on September 22, 2009, he had just pulled out of an old archived file the original '052 Patent, as

well as a letter sent by Wood, Herron & Evans accompanying the original '052 Patent since it was originally received from Wood, Herron & Evans. Mr. Davis then noted the language regarding payment of the maintenance fees.

3. Mr. Davis indicated that he did not think any maintenance fees had been paid. He had just discovered the '052 Patent and the TollamCo, Corp. was bankrupted or otherwise dissolved.

4. I briefly looked through the Wood, Herron & Evans' docketing system, and advised Mr. Davis that the maintenance fees had not been paid by Wood, Herron & Evans absent instructions to do so from the owner of the Patent, and thus, the '052 Patent was expired for non-payment of maintenance fees. I also verified from the U.S. Patent and Trademark Office's website that the maintenance fee had not been paid and the Patent was expired.

5. Also in the call on September 22, 2009, I indicated that I would obtain the file history associated with the '052 Patent. At that time, I obtained a copy of the '052 Patent, and looked at the issue to calculate the first maintenance fee due date of February 5, 2007. I then determined that a six-month grace period was available taking the date of the first maintenance fee payment out to August 5, 2007. In reviewing 37 C.F.R. §1.378(b) and Section 2590 in the Manual of Patent Examination Procedure (MPEP) regarding the late payment of maintenance fees, I determined that, as of September 22, 2009, Mr. Davis was beyond the twenty-four months following the six-month grace period for the '052 Patent in which to file a Petition to Accept an Unintentionally Delayed Payment of the First Maintenance Fee.

6. On September 25, 2009, in a follow-up call to Mr. Davis, I advised Mr. Davis that it would be necessary to file any Petition to pay the maintenance fee late with a sufficient showing regarding the delay being unavoidable and any reasonable efforts to pay the maintenance fee. The fee could not just be paid late. I noted that the burden to establish an unavoidable situation was high, and it was necessary for Mr. Davis to provide specific facts regarding how the delayed payment was unavoidable, given the situation surrounding that issue and detailing any efforts that had been made by TollamCo, Corp., Mr. Davis, or the other inventor, Mr. Klonne, to address, calendar, docket and pay the maintenance fee. Mr. Davis indicated that since he had just discovered the '052 Patent, he would have to work in trying to gather the facts surrounding the Patent, the two inventors, TollamCo, Corp., and the issue of the maintenance fees. To the date of filing this Petition, I have worked with Mr. Davis in the arduous and difficult task in trying to determine the various facts available surrounding the delayed payment of the maintenance fee.

7. Assisting in this regard, I had checked the records of Wood, Herron & Evans, and also checked the records at the U.S. Patent and Trademark Office regarding any executed Assignment document in the file associated with the '052 Patent and TollamCo, Corp. or any recording of an Assignment with respect to the '052 Patent. I found no Assignment executed by the two inventors in the files of Wood, Herron & Evans, and did not find an Assignment recorded against the '052 Patent at the United States Patent and Trademark Office.

8. In the September 25, 2009 phone call, I discussed the issue of any Assignment and any efforts made by the TollamCo, Corp. and/or the two inventors, Mr. Davis and Mr. Klonne to pay the maintenance fee. I indicated that, to establish the unavoidable nature of the delayed payment of the maintenance fee, the records needed to be examined to determine the ownership of the '052 Patent and what efforts were taken by any ownership entities, including possibly the two inventors individually, for payment of the maintenance fee.

9. I had worked with the inventors Mr. Davis and Mr. Klonne in the preparation of and filing of the application that issued into the '052 Patent. I also worked in the prosecution of that application until Patent issuance. I reviewed the prosecution records we have in the files of Wood, Herron & Evans regarding that Patent to assist Mr. Davis in determining the facts surrounding the Patent, the ownership thereof, and any maintenance fee payments.

10. During prosecution, on September 24, 2001, I received a note and corporation documents from Mr. Davis indicating that the two inventors wished to assign the Patent to TollamCo, Corp. (Exhibit A). On September 27 2001, I forwarded an Assignment to Mr. Davis at TollamCo, Corp. (Exhibit B). On November 26, 2001, in further correspondence to Mr. Davis and Mr. Klonne, I indicated we had not yet received the executed Assignment (Exhibit C). No executed Assignment document was received by me from Mr. Davis and Mr. Klonne that would have assigned the two inventors' rights to TollamCo, Corp. No Assignment was recorded at the U.S. Patent Office by me with respect to the '052 Patent.

11. I also checked the records at the U.S. Patent and Trademark Office regarding any recording of an Assignment with respect to the '052 Patent. I did not find any.

12. I did not record any Assignment for Mr. Davis and Mr. Klonne, and did not indicate any corporation ownership on the Issue Fee Payment documents for the '052 Patent.

13. On August 8, 2003, I had forwarded to Mr. Davis, at the address of 223 Congress Street, New Richmond, OH 45205, the original '052 Patent. Attached was a cover letter that noted the '052 Patent would expire May 25, 2021, and that maintenance fees were due 3½, 7½, and 11½ years from the issued date of the '052 Patent. The letter also indicated that Wood, Herron & Evans would attempt to notify the Patent owner on the 3<sup>rd</sup>, 7<sup>th</sup>, and 11<sup>th</sup> anniversaries of the need to pay the maintenance fees and the amount of the fees (Exhibit D).

14. We enclosed with that letter a self-addressed postcard to indicate receipt of the formal Patent document. We received the postcard back on August 14, 2003 (Exhibit E).

15. I did not have any further instructions from TollamCo, Corp., Mr. Davis, or Mr. Klonne regarding the '052 Patent. I had no further contact on patent matters with and did no further patent work with TollamCo, Corp., Mr. Davis, or Mr. Klonne.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the Application or any Patent issued thereon.

Further Declarant sayeth naught.

6-29-10  
Date

Kurt A. Summe  
Kurt A. Summe

# TollamCo, Corp

7131 East Kemper Road  
Cincinnati, OH 45249  
Phone: 513-469-8244  
Fax: 513-469-8442  
E-mail: TolLamCo@aol.com

September 20, 2001

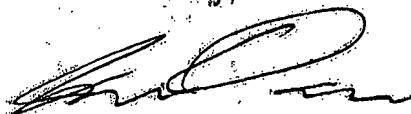
Mr. Kurt Summe  
Wood, Herron & Evans  
2700 Carew Tower  
441 Vine Street  
Cincinnati, OH 45202-2917

Dear Kurt:

We wish to assign the patent to TollamCo, Corp. Attached is our certificate of incorporation which should clear up any issues regarding the proper company name to use.

We have no foreign sales at this time, so probably will not pursue any foreign patents.

Sincerely,



John Davis

EXHIBIT A

# The State of Ohio

Bob Taft

Secretary of State

CP 7977

## Certificate

It is hereby certified that the Secretary of State of Ohio has custody of the Records of Incorporation and Miscellaneous Filings: that said records show the filing and recording of: AMD MIS CHN

of:

TOLLAMCO, CORP. FORMERLY TRILAMCO, INC.

United States of America  
State of Ohio  
Office of the Secretary of State

Recorded on Roll 6207 at Frame 0923 of  
the Records of Incorporation and Miscellaneous Filings.

Witness my hand and the seal of the Secretary of State at  
Columbus, Ohio, this 19TH day of MARCH  
A.D. 1998

*Bob Taft*  
Bob Taft  
Secretary of State





Bob Taft, Secretary of State  
30 East Broad Street, 14th Floor  
Columbus, Ohio 43265-0418  
Form C-109 (January 1991)

Charter No. CP7977

Approved EJS

Date 3-19-98

Fee \$35-

06207-0923 98031942001

## CERTIFICATE OF AMENDMENT BY INCORPORATORS

### To Articles of

**TRILAMCO, INC.**

(Name of Corporation)

(Sec. 1701.70(A) O.R.C.)

WE, the undersigned, being all of the incorporators of the above named corporation, do certify that the subscriptions to shares have not been received in such amount that the stated capital of such shares is at least equal to the stated capital set forth in the articles as that with which the corporation will begin business and that we have elected to amend the articles as follows:

The name of the corporation shall be changed from TRILAMCO, INC. to TollamCo, Corp. effective immediately upon the filing of a Certificate of Amendment to the Articles of Incorporation, with the Ohio Secretary of State.

RECEIVED

MAR 19 1998

BOB TAFT  
SECRETARY OF STATE

IN WITNESS WHEREOF, we, being all of the incorporators of the above named corporation, have hereto subscribed our names this 18th day of March 19 98

BY Timothy P. Klonne

BY \_\_\_\_\_ Timothy P. Klonne

BY \_\_\_\_\_

BY \_\_\_\_\_

(Incorporators)

# WOOD, HERRON & EVANS, LLP

JOHN D. POFFENBERGER  
BRUCE TITTEL  
DONALD F. FREI  
DAVID J. JOSEPHIC  
A. RALPH NAVARO, JR.  
DAVID S. STALLARD  
J. ROBERT CHAMBERS  
GREGORY J. LUNN  
KURT L. GROSSMAN  
CLEMENT H. LUKEN, JR.  
THOMAS J. BURGER  
GREGORY F. AHNRENS  
WAYNE L. JACOBS  
KURT A. SUMME  
KEVIN G. ROONEY  
KEITH R. HAUPPT  
THEODORE R. REMAKLUS  
THOMAS W. HUMPHREY  
SCOTT A. STINEBRUNER

2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917  
TELEPHONE: 513-241-2324  
FACSIMILE: 513-421-7269  
EMAIL: [info@whepatent.com](mailto:info@whepatent.com)  
PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1966  
TRUMAN A. HERRON 1935-1978  
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
C. RICHARD EBY  
DAVID E. PRITCHARD  
DAVID H. BRINKMAN  
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BEVERLY A. LYMAN, Ph.D.  
KATHRYN E. SMITH  
KRISTI L. DAVIDSON  
P. ANDREW BLATT, Ph.D.  
DAVID E. JEFFERIES  
DAVID E. FRANKLIN  
WILLIAM R. ALLEN, Ph.D.  
JOHN PAUL DAVIS  
DOUGLAS A. SCHOLER  
FRANK M. MUNGO (KY BAR)  
BRETT A. SCHATZ  
ALLISON A. DAVIDSON

TECHNICAL ADVISORS  
HENRY M. LABODA, Ph.D.  
LARRY D. MOORE, B.S.E.E.  
DAVID W. DORTON, M.M.E.  
RONALD J. RICHTER, M.D.  
G. PRABHAKAR REDDY, M.S.C.H.

September 27, 2001

Mr. John E. Davis  
TolLamCo, Corp.  
7131 East Kemper Road  
Cincinnati, Ohio 45249

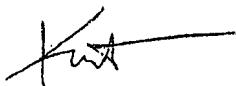
Re: U.S. Patent Application, Serial No. 09/865,822  
FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Our Ref: TRIL-05

Dear John:

Thank you for sending along the copy of your Certificate of Incorporation. Attached is the Assignment for your invention which conveys the rights of you and Tim to the corporation. Please review the assignment, and if you find everything in order sign where indicated, having each signature notarized. Then return the Assignment to me and I will tend to having it recorded at the U.S. Patent and Trademark Office.

If you have any questions, give me a call.

Very truly yours,



Kurt A. Summe

KAS:jra  
Enclosure

EXHIBIT B

ASSIGNMENT OF INVENTION AND  
PATENTS THEREON

WHEREAS, We, John E. Davis, 9877 Hayfield Court, Loveland in the State of Ohio, and Timothy P. Klonne, 10726 Weller Woods Drive, Cincinnati, in the State of Ohio have invented a Fluid Absorbent Article for Surgical Use, as fully disclosed in an application for Patent so entitled and executed by us on even date herewith preparatory to obtaining Letters Patent of the United States therefor; and whereas, TollamCo, Corp., a corporation organized under the Laws of the State of Ohio and having its principal office at 7131 East Kemper Road, Cincinnati, Ohio. 45249, desires to acquire the entire interest in and to the subject matter disclosed in said application and in and to all patents issued or to be issued thereon.

NOW, THEREFORE, to all whom it may concern, be it known that, for and in consideration of the sum of One Dollar to us in hand paid, and other good and valuable consideration, the receipt of which is hereby acknowledged, we have sold, assigned and transferred, and by these presents do sell, assign and transfer unto the said TollamCo, Corp. our entire right, title and interest in and to the subject matter disclosed in said application and in and to all Letters Patent-Domestic and Foreign issued or to be obtained thereon, including all rights and interests with priority rights under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperative Union, European Patent Convention, Common Market Convention, or any other Convention or Union for each country of said Convention or Union; and we do hereby authorize and request the Commissioner of Patents to issue the Letters Patent granted on said application and all future patents granted upon the subject matter disclosed therein to the above named Assignee, its legal representatives and assigns.

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

\_\_\_\_\_  
Inventor

John E. Davis

STATE OF \_\_\_\_\_ )

) ss.

COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me personally appeared John E. Davis, to me known and known by me to be the above named individual, who duly acknowledged the signing of the foregoing instrument to be a voluntary act and deed and who executed the same for the uses and purposes therein specified.

(SEAL) \_\_\_\_\_ Notary Public

My Commission Expires:

Witness my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Inventor

Timothy P. Klonne

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2001, before me personally appeared Timothy P. Klonne, to me known and known by me to be the above named individual, who duly acknowledged the signing of the foregoing instrument to be a voluntary act and deed and who executed the same for the uses and purposes therein specified.

(SEAL) \_\_\_\_\_ Notary Public

My Commission Expires:

# WOOD, HERRON & EVANS, LLP

JOHN D. POFFENBERGER  
BRUCE TITTEL  
DONALD F. FREI  
DAVID J. JOSEPHIC  
A. RALPH NAVARO, JR.  
DAVID S. STALLARD  
J. ROBERT CHAMBERS  
GREGORY J. LUNN  
KURT L. GROSSMAN  
CLEMENT H. LUKEN, JR.  
THOMAS J. BURGER  
GREGORY F. AHRENS  
WAYNE L. JACOBS  
KURT A. SUMME  
KEVIN G. ROONEY  
KEITH R. HAUPT  
THEODORE R. REMAKLUS  
THOMAS W. HUMPHREY  
SCOTT A. STINEBRUNER

2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917  
TELEPHONE: 513-241-2324  
FACSIMILE: 513-421-7269  
EMAIL: [info@whepatent.com](mailto:info@whepatent.com)  
PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1968  
TRUMAN A. HERRON 1936-1976  
EDWARD B. EVANS 1936-1971

JOSEPH R. JORDAN  
C. RICHARD EBY  
  
DAVID E. PRITCHARD  
DAVID H. BRINKMAN  
J. DWIGHT POFFENBERGER, JR.  
BEVERLY A. LYMAN, Ph.D.  
KATHRYN E. SMITH  
KRISTI L. DAVIDSON  
P. ANDREW BLATT, Ph.D.  
DAVID E. JEFFERIES  
DAVID E. FRANKLIN  
WILLIAM R. ALLEN, Ph.D.  
JOHN PAUL DAVIS  
DOUGLAS A. SCHOLER  
FRANK M. MUNGO (KY BAR)  
BRETT A. SCHATZ  
ALLISON A. DAVIDSON

TECHNICAL ADVISORS  
HENRY M. LABODA, Ph.D.  
LARRY D. MOORE, B.S.E.E.  
DAVID W. DORTON, M.M.E.  
RONALD J. RICHTER, M.D.  
G. PRABHAKAR REDDY, M.S.C.H.

November 26, 2001

Mr. John E. Davis  
TolLamCo, Inc.  
7131 East Kemper Road  
Cincinnati, Ohio 45249

Re: U.S. Patent Application, Serial No. 09/865,822  
FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Our Ref: TRIL-05

Dear John:

Please find enclosed the current invoice for the work done with your application. The bill reflects time and costs associated with preparing and filing an Information Disclosure Statement which cites to the U.S. Patent Office all of the prior art of which we are aware. We are under a continuing obligation to cite relevant prior art to the patent office, when we become aware of such art. Therefore, if you come across any additional prior art during any sales or promotion of the invention, please let me know.

The invoice also reflects time and costs associated with filing the executed Declaration. You will recall that, due to the time crunch, it was necessary to file the application with an executed Declaration. Pursuant to that, we received a Notice to File Missing Parts from the Patent Office, and we tended to that Notice by filing the executed Declaration.

We have not yet received any Office Actions from the Patent Office on your application, but we will keep you apprised as to the status of the application when we hear anything further.

On a related matter, we have not yet received an executed Assignment from you. It was my understanding that you wished to designate your firm as the owner of the patent,

**EXHIBIT C**

WOOD, HERRON & EVANS, LLP

Mr. John E. Davis  
TollamCo, Inc.  
November 26, 2001  
Page 2

and the Assignment is a necessary step to accomplish that goal. If your plans have changed, please let me know. Otherwise, I will expect to receive the executed Assignment in the near future.

If you have any questions at all, please contact me.

Very truly yours,



Kurt A. Summe

KAS:jra  
Enclosure

cc: Mr. Tim Klonne

# WOOD, HERRON & EVANS, LLP.

JOHN D. POFFENBERGER  
BRUCE TITTEL  
DONALD F. FREI  
DAVID J. JOSEPHIC  
DAVID S. STALLARD  
J. ROBERT CHAMBERS  
GREGORY J. LUNN  
KURT L. GROSSMAN  
CLEMENT H. LUKEN, JR.  
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THEODORE R. REMAKLUS  
THOMAS W. HUMPHREY  
SCOTT A. STINEBRUNER  
DAVID H. BRINKMAN

OF COUNSEL  
THOMAS W. FLYNN

2700 CAREW TOWER  
441 VINE STREET  
CINCINNATI, OHIO 45202-2917  
TELEPHONE: 513-241-2324  
FACSIMILE: 513-421-7269  
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PATENT, TRADEMARK, COPYRIGHT  
AND UNFAIR COMPETITION LAW  
AND RELATED LITIGATION

EDMUND P. WOOD 1923-1988  
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JOSEPH R. JORDAN  
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WILLIAM R. ALLEN, Ph.D.  
JOHN PAUL DAVIS  
DOUGLAS A. SCHOLER  
BRETT A. SCHATZ  
MICHELLE D. NOBBE  
DAVID W. DORTON  
RONALD J. RICHTER, M.D.  
G. PRABHAKAR REDDY, M.B.CH.  
SARAH OTTE GRABER

TECHNICAL ADVISORS  
HENRY M. LABODA, Ph.D.  
LARRY D. MOORE, B.S.E.E.

August 8, 2003

Mr. John E. Davis  
223 Congress Street  
New Richmond, Ohio 45205

Re: U.S. Patent Application, Serial No. 09/865,822  
FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Our Ref: TRIL-05

Dear John:

I am pleased to enclose original U.S. Patent No. 6,603,052, for the above-identified invention. This patent issued on August 5, 2003, and will expire on May 25, 2021. This patent has not yet been proofread for errors, but we will notify you of any discrepancies in that regard. Also attached are two paper copies for your files.

All products manufactured in accordance with this patent should be marked "U.S. Patent No. 6,603,052." Please note that the terminal notation "B2" does not form part of the patent number, but is used by the Patent Office to harmonize with lettering used by the International Patent Offices to distinguish patents from patent applications. It need not be shown when marking products.

Maintenance fees are due 3 1/2, 7 1/2 and 11 1/2 years from the issue date of the patent. We will notify you on about the 3rd, 7th and 11th anniversaries of the need to pay the maintenance fee and the amount of the fee.

Since these are original documents, they should be kept in a safe place. A self-addressed postcard has been included for your signature and return to me which acknowledges your receipt of these original documents.

Very truly yours,



Kurt A. Summe

Encl.

## EXHIBIT D

Client/Matter: TRIL-05

WHE Docket No.: 46445

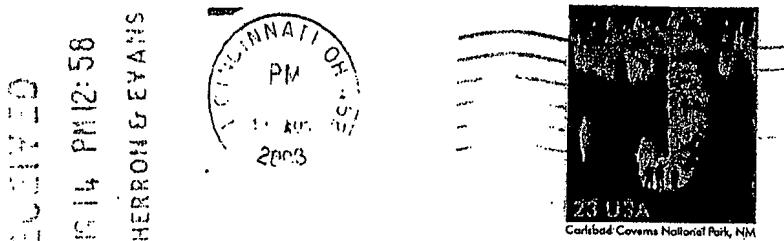
The signature of the undersigned may be taken as acknowledging the receipt of the following items in the captioned case:

Applicant: Davis et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Serial No.: 09/865,822  
Date of Patent: August 5, 2003  
Enclosures: Original and two paper copies of U.S. Patent No. 6,603,052

X  
Date of Receipt

  
Signature

FRONT SIDE OF POSTCARD



WOOD, HERRON & EVANS, LLP  
441 Vine Street  
2700 Carew Tower  
Cincinnati, Ohio 45202-2917

5202842823 

BACK SIDE OF POSTCARD

EXHIBIT E

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL DECLARATION OF JOHN E. DAVIS**

John E. Davis, being first duly cautioned and sworn, states as follows:

1. My name is John E. Davis. I am one of the inventors in U.S. Patent No. 6,603,052.
2. On June 29, 2010, I originally filed a Petition to Accept an Unavoidably Delayed Payment of the Maintenance Fee for U.S. Patent No. 6,603,052. That Petition was dismissed.
3. The Decision indicated that I have the burden of establishing that I exercised the due care of a reasonably prudent person. I assert that I did act reasonably prudent in handling my affairs associated with the patent, to the extent that I could even understand or remember what was occurring at the time the patent issued, and when I received the original patent and a letter regarding the payment of maintenance fees by particular deadlines.

4. It was necessary that I turn my business affairs, including the '052 maintenance tracking issue, over to my daughter because of my condition and the fact that I could not reliably handle my business and financial matters at the time of the stroke in 2003, as set forth in my original Declaration.

5. Because of my lack of memory with respect to any exposure to the original patent, the receipt of that original patent, and any accompanying letter, I did not even have the opportunity to know about the maintenance fee issue or the maintenance fee due dates for the patent. I did not know of, or did not remember, the original patent or maintenance fee issue to even know I had to set up a reminder, or that I had to pay maintenance fees. As such, as I stated in my original Declaration, I could not reasonably set up a docketing system, as I was mentally incapable of even knowing I had to do so. That lack of knowledge was the result of the stroke and my lack of knowledge regarding the maintenance fee continued from that time frame in 2003, up through the 2007 expiration of the patent, and also up until I inadvertently discovered the patent in the archived files. I did not even have the knowledge of the issue to take any such steps.

(Original Davis Declaration Paragraph 23.)

6. However, from further discussing this issue with my daughter, I have come to discover that, on my behalf, around the time of receiving the original '052 Patent in 2003, she had indeed initially set up an internal docketing and reminder system to address the issue of the maintenance fees for the '052 Patent.

7. Given my mental and physical state at that time, it was certainly reasonable and prudent for me to rely upon my daughter. That reliance was well-placed as she handled various of my business and financial matters in 2003, and put in a calendar date for the time frame of August, 2006 to remind her, and in turn, remind me, regarding the maintenance fees and the need to pay them. This was my most reasonable chance at addressing the issue.

8. My physical and mental ailments in the time frame of August, 2003 were real and significant. Attached hereto as Exhibit A are documents from my neurology doctor, Marvin H. Rorick, M.D. regarding the details of my stroke in May of 2003. Also attached as Exhibit B are documents from Santosh G. Menon, M.D. and supporting documents setting forth my reduced cardiac function. The effects of these ailments still affect me today (Original Davis Declaration Paragraph).

9. From the time of the expiration of the patent up until the time that I discovered the original patent on September 22, 2009, I did not even know that any action had to be taken with respect to paying the maintenance fees. Once I discovered that fact, as I noted in my original Declaration (Declaration of John E. Davis Paragraph 5), I made diligent efforts in the arduous task to gather the information necessary to establish that this delay in payment of the maintenance fee was truly unavoidable.

10. My personal health issues were not immaterial to the delay in paying the maintenance fee. Because of the stroke, I was mentally incapable of even knowing about the maintenance fee issue. Thus, this prevented me from even taking steps, on my own, with respect to scheduling a reminder to pay the fee. The lack of that initial knowledge with respect to the maintenance fee issues did not change over the course of the time from the issuance of the original patent, up to the date that the first maintenance fee was due, and then up to the date that I discovered the original patent in the archived files. I am not asserting that I was not mentally or physically capable of setting up some kind of further reminder system during that time, but I did not even have the knowledge to know that maintenance fee payments were due.

11. I had reasonably relied upon my daughter, Laura Brumbaugh, and that reliance was both reasonable and prudent, as Ms. Brumbaugh helped me to take care of various personal and business matters. However, her reminder system that she put into place on my behalf to provide a reminder with respect to the maintenance fee issue also failed. Therefore, I did not have any personal knowledge that I was supposed to pay the maintenance fee, and because of the mechanical failure of my daughter's reminder system, my daughter, Ms. Brumbaugh, also did not have knowledge that maintenance fees were due that she could pass on to me. As such, it was unavoidable that we failed to have the requisite knowledge to take any further steps for payment of the maintenance fee.

12. In addressing the assignment issue noted in the Decision, I have also managed, through significant effort, to find and contact Mr. Klonne, the other inventor, to confirm that assignment. He is filing a Declaration herewith indicating that he had assigned his entire ownership interest in the '052 Patent to me. Therefore, I am the sole owner of the '052 Patent.

13. I was not aware of the need to pay patent maintenance fees due to my stroke. I could not act on information of which I was not aware. Nor could I know to make even a further reminder system that might supplement the system that failed. I made the prudent decision of turning over my matters, including the patent matter, to my daughter, Ms. Brumbaugh. My daughter did set up a docketing/reminder system for the patent on my behalf, and so I had a system in place, although through my daughter. That system failed unfortunately. Because I had no original knowledge of the issuance of the patent or the maintenance fee issue and my docketing system in place at the time associated with my daughter failed, I had no way to know that the original maintenance fee due dates had come and passed. From the time the patent was granted, up through the time of discovery of the original patent, it was unavoidable that I would not know to take further action with respect to maintenance fee payment or to set up another reminder system of my own. When I found out about the maintenance fee issue, I took the necessary steps to pay it and explain the unavoidable nature of the situation. Accordingly, it was unavoidable that the maintenance fee was delayed.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.



11/18/10

Date

John E. Davis

Document #1285937



From the desk of:

Marvin H. Rorick, M.D.

11/8/10

To whom it may concern,  
The enclosed documentation  
indicates my treatment  
of John Davis..

Please call if any  
questions.

MR Rorick MD  
513-241-2370

## ENCOUNTER REPORT

DAVIS, JOHN E (M) 54 Years 03/06/1949 UN:343527C-4

ACCT # 341387

RORICK, MARVIN H, MD

OUTPATIENT VISIT : WELLINGTON

05/23/2003 OFFICE CONSULT COMP HIGH COMPLEX 99245

PRINTED: 11/8/10

DOS: 05/23/2003

OFFICE CHART 10

## ----- DIAGNOSES/PROBLEMS -----

## MAJOR

## BRAIN INFARCTION UNSPECIFIED

The patient is a 54 year old right handed man who reports the first stroke which occurred in 1998. This apparently involved the right temporal region of the brain and was not associated with lasting neurologic deficits. He was doing well until 5/6/03 when he felt mildly confused and had some dizzy fogginess. He was able to drive to work and the following day was noted to be somewhat forgetful. Another CT scan of the brain was performed and revealed a new area of infarction in the right occipital pole. Echocardiographic study was performed and revealed an apical thrombus and he was started on Coumadin anticoagulation. Carotid ultrasound studies have been performed and have revealed no abnormalities. He has been doing moderately well and has been able to return to work. He does not report a severe visual impairment.

## MINOR

## SLEEP APNEA

## HYPERCHOLESTEROLEMIA

## ----- HEALTH REVIEW -----

## SOCIAL HISTORY

Married, currently working sales.

## ALCOHOL USE

0

## PERSONAL SMOKING HISTORY

0

## ----- PHYSICAL EXAM -----

PULSE 72

BLOOD PRESSURE 110/80

## HEIGHT

6'2"

ACTUAL WEIGHT LB 223

## HEART

Regular rate and rhythm. No murmur appreciated.

## MENTAL STATUS

He reports some cognitive difficulty with poor memory on occasion.

## CRANIAL NERVE EXAMINATION

Extraocular movements conjugate and full. Visual fields no deficit identified on the left. No visual neglect. He is able to read.

## ENCOUNTER REPORT

DAVIS, JOHN E (M) 54 Years 03/06/1949 UN:343527C-4

## --PHYSICAL EXAM--

## MUSCLE STRENGTH

Symmetric in arms and legs.

## SENSORY EXAM

Intact to all modalities.

## GAIT

Stable.

PRINTED: 11/8/2010

DOS: 05/23/2003

## ----- ALLERGIES -----

NO KNOWN DRUG ALLERGIES

## ----- MEDICATION -----

CLOPIDOGREL (PLAVIX) 75 MG QD

PRAVASTATIN (PRAVACHOL) 20 MG QD

WARFARIN (COUMADIN) 7.5 MG 3 DAYS A WEEK 5 MG 4 DAYS A WEEK

## ----- THERAPIES -----

## PLAN OF ACTION

His echocardiogram reveals presence of a likely apical thrombus which was not identified in the work up performed in 1998. He has been anticoagulated with Coumadin. It is recommended that he have a transesophageal echocardiogram performed in approximately six months.

## ----- ADMINISTRATIVE DATA -----

REVIEWED AND SIGNED BY RORICK, MARVIN H, MD

TRANSCRIPTION DATE

5/30/2003

TRANSCRIPTIONIST

RT

COPY

JEFFREY MERLING, M.D.

ENCOUNTER REVIEW DATE 6/2/03

\*\*\* END OF REPORT \*\*\*

# The Ohio Heart & Vascular Center

John F. Schneider, MD, FACC  
President & Chief Executive Officer

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Geoffrey A. Answini, MD, FACS  
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Joe Barone, CNP  
Kathleen Daly, CNP  
Jaime Ginney, PA  
Cheryl Hickey, CNP  
Amy Rich, CNP  
Ann E. Suttmann, CNP

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Western Hills  
Wilmington*

John Davis  
223 Congress Street  
New Richmond, OH 45157  
513-379-6464

11/5/10

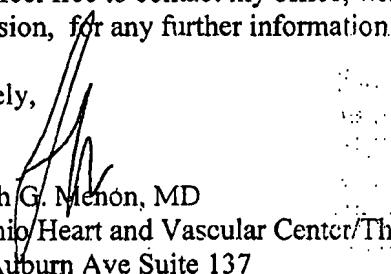
To Whom It May Concern:

Mr. Davis has been a patient of mine since July of 2002. He has unfortunately had various ailments, but I have been specifically treating him with his diagnosis of Wolff-Parkinson-White syndrome (WPW) and heart failure (HF). WPW essentially causes a heart arrhythmia that can be life-threatening if untreated. The arrhythmias associated with WPW can, at the very least, cause structural changes to the heart leading to HF. There is no definitive cause for Mr. Davis's HF, but it is often thought that undetected, untreated and more specifically for Mr. Davis, uncontrolled arrhythmias can cause HF. Mr. Davis started the appropriate medications and has had several interventions in an attempt to correct the arrhythmias associated with WPW. Mr. Davis seemed to have a particularly difficult time with arrhythmias between February 2, 2007 and June 29, 2010.

Generally, HF leads to reduced cardiac function; leading to reduced blood flow to all body organs and the brain. Symptoms of HF include shortness of breath especially upon exertion, fatigue, reduced mental capacity, swelling, reduced appetite. HF is a progressive disease that can eventually cause damage to other organs including but not limited to the kidneys, liver and brain. Our goal is to slow the progression of HF with medications, procedures, devices as well as diet.

Please feel free to contact my office, with Mr. Davis's written permission, for any further information regarding Mr. Davis.

Sincerely,

  
Santosh G. Menon, MD  
The Ohio Heart and Vascular Center/The Christ Hospital  
2123 Auburn Ave Suite 137  
Cincinnati OH 45219  
513-206-1180

## DOCTOR DATA

Date: 10/25/2010 9:07 AM

#129082 John Davis (03/06/1949) 61/M

Primary Cardiologist: Santosh G Menon MD  
PCP: Jeffrey W Merling

### PHARMACY

Costco Pharmacy - Mason  
Medco (Mail Order)

### SOCIAL HISTORY

### INSURANCE

Medical Mutual of Ohio Health

### VITALS

PRIMARY CARE DOCTOR: Jeffrey W Merling

### CARDIAC HISTORY

#### CAD:

- 1 Cath [Normal coronaries] - 7/3/2002
- 2 Cath [EF.20, Lateral / Inferior / Apical Dysk, Normal Coronaries, Right Dominant] - 8/6/2009

#### CHF/CM:

- 1 Idiopathic Cardiomyopathy [EF.53 by 2D/CFD Echo, Mild Septal Hypo, Mild MR, Mild LVH] - 11/7/2006
- 2 Idiopathic Cardiomyopathy [EF.33 by 2D/CFD, Apical Hypo, Mild LVH, dilated LA] - 8/8/2008
- 3 RHC [RA Mean 4, PA Systolic 24, PA Diastolic 13, PA Mean 18, PWP 6, CO 3.1, CI 1.4, SVR 21.8, PVR 3.8] - 8/6/2009

#### Arrhythmia:

- 1 WPW, paroxysmal tachycardia [RFA, Left posteroseptal AP; inducible AVNRT: RFA of AV node slow pathway] - 4/22/1997
- 2 Nonsustained VT
- 3 Syncope [Head- up Tilt Table Study: Vasodepressor response 115/84 >> 77/50 mmHg; 54 >> 56 bpm] - 7/15/2002
- 4 DCCV - 3/22/2007
- 5 A Fib [ER at TCH, started on pacerone] - 5/7/2007
- 6 AFlutter [EPS, RA 3-D map: focal AT with early activation in right posterosuperior RA septum; RFA no effect on tachycardia. LA 3-D map: Complex left atrial flutter with multiple loop (figure of eight) reentry, LA roof to posterior wall, and CW around RPV, CCW around LPV] - 7/9/2007
- 7 A Flutter [Successful PVI with demonstration of exit block. Unsuccessful ablation for A Flutter] - 12/7/2007
- 8 PAF [DCCV, Betapace 80 mg q12h and Coreg 12.5 mg bid] - 1/2/2008
- 9 Syncope [Neurally-mediated mechanism suspected.] - 10/4/2008
- 10 NICM EF 33%, CHF III, PAF and Aflutter s/p RFA, recurrent near syncope, Hx CVA [ICD, AV Medtronic D154AWG Virtuoso] - 10/20/2008

#### PVD:

- 1 Hemispheric CVA - 2000
- 2 Hemispheric CVA - 5/2003

#### Risk Factors:

- 4 Dyslipidemia
- 5 Family History of CAD [Less than 60 years of age]

### CARDIAC PROCEDURES:

#### Invasive:

Cath (EF.20, Lateral / Inferior / Apical Dysk, Normal Coronaries, Right Dominant) - 8/6/2009  
Cath (Normal Coronaries) - 7/3/2002  
RHC (Cath lab: RA Mean 4, PA Systolic 24, PA Diastolic 13, PA Mean 18, PWP 6, CO 3.1, CI 1.4, SVR 21.8, PVR 3.8) - 8/6/2009

**DOCTOR DATA**

Date: 10/25/2010 9:07 AM

#129082 John Davis (03/06/1949) 61/M

**Primary Cardiologist: Santosh G Menon MD**  
**PCP: Jeffrey W Merling****Echo/MUGA:**

2D/CFD (EF.23, Moderate LAE, Moderate TR, LAE, Mild PR, Severe MR, poor coaptation of MV leaflets, vena cava dilation, RVSP 53 mmHg) - 8/4/2009

2D/CFD (EF.33, Apical Hypo, Mild LVH, dilated LA) - 8/8/2008

2D/CFD (EF.33, Distal-Anterior / Distal-Inferior / Apical Akin, Moderate TR (Pk 48), Impaired Relaxation Diastolic Dysfunction, Severe MR) - 8/31/2010

2D/CFD (EF.33, Moderate-Severe Apical Hypo, Mild LVH, Mild MR, moderately dilated LA) - 4/28/2008

2D/CFD (EF.53, Mild Septal Hypo, Mild MR, Mild LVH) - 11/7/2006

**EP:**

DCCV (Initial Rhythm A Flutter, Final Rhythm A Flutter, Max Joules 200, 2 Shocks) - 5/2/2007

DCCV (Initial Rhythm A Flutter, Final Rhythm Sinus, Max Joules 200, 1 Shock) - 1/2/2008

Devices (Dual Chamber (Medtronic-D154AWG), Virtuoso DR; RA 5076-52 LCE/RAA; RV 6947-65 LCE/RVA) - 10/20/2008

EKG (Atrial Flutter 2:1) - 12/20/2007

EKG (Atrial Flutter 2:1, RATE 78 QRS 178 QT 500) - 11/30/2007

EKG (Atrial Flutter 3:1, HR 93) - 2/18/2008

EKG (PSVT, Rate 152) - 5/2/2007

EKG (PVCs, Sinus Rhythm, First Degree AVB, rate 71 QRS 98 QT/QTc 430/468) - 7/17/2008

EKG (Rare PACs, Sinus Rhythm, First Degree AVB, Rate 66 QRS 84 Qt 429) - 5/3/2007

EKG (Sinus Rhythm, First Degree AVB, borderline low voltage in frontal leads, borderline R wave progression, QRSD 0.081) - 2/5/2008

EKG (Sinus Rhythm, First Degree AVB, QRSD 0.086) - 2/21/2006

EKG (Sinus Rhythm, First Degree AVB, rate 66 bpm, PR 253, QRS 92, QTc 472) - 4/7/2008

EKG (Sinus Rhythm, First Degree AVB, rate 72 qrs 102 qt 443) - 1/7/2008

EPS (recurrent AF due to LA flutter Multiple loop reentry) - 7/9/2007

Holter (non-sustained VT) - 6/11/2002

RFA (Indication WPW, Ablation of left posteroseptal accessory pathway at Allegheny Univ.) - 4/22/1997

Tilt Table (Positive tilt table test with a vasodepressor response) - 7/15/2002

**Stress Tests:**

MPI (EF.35, Abnormal, evidence of prior MI in the LAD region, no evidence for stress induced ischemia) - 8/11/2006

**Other:**

CXR (, Stable mild cardiomegaly. No acute cardio-pulm process.) - 8/23/2010

Sleep Study (OSAS: Mild. Treatment: CPAP, AHI 12.1) - 7/10/2002

**DIAGNOSIS HISTORY**

Old or Healed CVA

Ventricular Tachycardia

Idiopathic Cardiomyopathy

Atrial Flutter

ED

Old or Healed CVA on plavix, cardiac source

Paroxysmal Atrial Fibrillation

Other Primary Cardiomyopathy

Shortness of Breath

Arteriovenous Fistula

AV ICD in Situ

Mitral Regurgitation

Status Post Radiofrequency Ablation

Pre-Excitation/WPW

CRT/AICD/PCD in Situ

Palpitations

DOCTOR DATA

Date: 10/25/2010 9:07 AM

#129082 John Davis (03/06/1949) 61/M

Primary Cardiologist: Santosh G Menon MD  
 PCP: Jeffrey W Merling

Sleep Apnea

s/p ablation

Chronic Systolic Heart Failure

MEDICATIONS

<u>Brand</u>	<u>Generic</u>	<u>Dose</u>
Betapace	Sotalol Hcl	120mg Twice a day
Carvediolol	Carvediolol	12.5mg Once a day
Children's Aspirin	Aspirin	81mg Once a day
Co Q-10	Ubidecarenone	10mg Once a day
Coreg	Carvediolol	6.25mg Once a day
Coumadin	Warfarin Sodium	5mg As Directed
Coumadin	Warfarin Sodium	2.5mg Once a day MG follows
Furosemide	Furosemide	20mg Once a day
Kondremul	Mineral Oil/carrageenan	2.5ml/5ml Once a day
Lasix	Furosemide	20mg Once in the morning
Lovastatin	Lovastatin	20mg Once in the evening
Mevacor	Lovastatin	20mg Once in the evening
Multivitamin	Multivitamins	Twice a day
Plavix	Clopidogrel Bisulfate	75mg Once a day
Prednisone	Prednisone	10mg Once a day as directed and taper off
Triamterene-hctz	Triamterene/hydrochlorothiazide	37.5-25mg Once a day
Vitamin C	Ascorbic Acid	500mg Twice a day
Vitamin D	Cholecalciferol	2000 Unit Once a day

ALLERGIES

None

LIPID SUMMARY

<u>Date</u>	<u>Chol</u>	<u>HDL</u>	<u>LDL</u>	<u>Trig</u>	<u>Ratio</u>	<u>Non HDL</u>	<u>SGOT</u>	<u>SGPT</u>	<u>Cpk</u>
01/16/2007	135.00	52.00	69.00	72.00	2.60	83.00	20.00	19.00	

FYISTICKY NOTE

no pseudophed

?getting a ablation with waller in July

Consider for HeartNet/PEERLESS-HF trial / cherylbartone

Following the office visit, the patient had a thoracic impedance measurement that was normal. Will therefore not change the diuretics, will have a chest xray and empiric antibiotics, and early follow up with his PCP. Okay to take his steroids for poison ivy. Discussed with Dr. Merling.

JAK 8/23/10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

DECLARATION OF LAURA BRUMBAUGH

Laura Brumbaugh, being first duly cautioned and sworn, states as follows:

1. My name is Laura Brumbaugh. I am the daughter of John E. Davis, who is one of the inventors and the owner of U.S. Patent No. 6,603,052.
2. In 2003, I was just coming out of the time I had taken off for childbirth, and I started to take back over the management of my company, Newport Converting, and its parent company, Blue Horizon, Inc. Around that time, in May, 2003, my father asked, and actually required, that I assist him with his business and personal financial affairs. At the time, due to his previous stroke and health condition, he was unable to maintain his business and personal affairs on his own. Although my father moved in with my brother on Maple Avenue in Newport, Kentucky after the failure of his startup company, Tollamco, Corp., we had all of his mail sent to my home address so I could efficiently manage all of his incoming bills and important documents.

3. I received the original Patent Certificate for U.S. Patent No. 6,603,052 at my home address of 223 Congress Street, New Richmond, Ohio 45157 in early August, 2003.

4. Upon reading the cover letter, I filed the '052 Patent away in a permanent file at Blue Horizon, Inc. The letter indicated that we were to keep the original patent in a safe location, and that maintenance fees were due in intervals of 3½, 7½, and 11½ years. The letter from our lawyer stated that we would be notified by their office on or about the 3<sup>rd</sup>, 7<sup>th</sup>, and 11<sup>th</sup> anniversaries of the need to pay maintenance fees (Exhibit D of original Summe Declaration).

5. I alerted my father, John E. Davis, that we had received the '052 Patent, and that it had been filed away for him to review when he was ready; however, since he was struggling to remember basic everyday things at that time, it is likely he did not remember the conversation by the next day. I also had him sign the signature card along with several checks for bills that needed to be paid. It was customary for me to hand him a pile of things to be signed, and at this time, I would also address any issues or things I had questions with. It would have been then that I mentioned the receipt of the '052 Patent and its location.

6. I was handling all important affairs for my father at that August, 2003 time due to his incapacitation. I was also responsible for keeping track of any important dates associated with the affairs of my father in the August, 2003 time frame. My procedures for bill receipt and payment included the daily receipt and recording of the bills received for the day. I paid the bills once a week so that it was more efficient.

7. Any important dates, meetings, or calls to be made were placed as a reminder in my ACT database. The ACT database on my computer was a phone directory of all my contacts, as well as a calendar system through which I recorded just about everything I needed to do each day. It has been a very reliable system for me to manage dates, reminders, and other important business affairs.

8. On behalf of my father, I made a reminder note in my ACT database for some time in August of 2006 to remind me, and thus remind him, of the upcoming maintenance fees for the '052 Patent. It is customary for me to enter reminders of this nature to show on my calendar several weeks before they are actually due with the intention that, if they need extra attention, I will have time to do what is necessary without being late. Having had no prior experience with a patent, I am confident that I would have also given myself several weeks "heads-up time" with my reminder in the ACT database. I also entered other dates for my father's affairs, including billing issues and dates. For those purposes, in the noted 2003 time frame, my calendar system was also my father's calendar system.

9. Upon entering the reminder note for the August, 2006 into my ACT database along with the letter from Wood, Herron, & Evans, I was confident in the system I had made for my father that I had two safeguards to fall back on with regard to the patent renewal and maintenance fees. I was confident that the patent would be renewed at the appropriate time with no issue. With so many important things needing my attention, it is still imperative that I make notes in my

calendar to remind me of important dates. The '052 Patent maintenance issue would have been no exception. If I do not have these visual cues, it is not unusual for me to forget to do something.

10. Unfortunately, shortly thereafter, in November, 2003, the hard drive of my main computer crashed. This was the computer that maintained the ACT database and all my contacts and calendar information. That crash was detrimental to my personal and business life. We were able to recover some of the data files. However, due to the sheer volume of information stored in my ACT database, there was no way of ensuring that all of the information was fully restored when we installed a new hard drive and reloaded my ACT database software onto it.

11. Some reminders and events were lost by that crash. Upon using the database over the next year or so, this fact became apparent when my usual reminders for birthdays and other similar and well-known long-term events that take place only once a year were noticed to be missing. While I could recognize lost data for well-known dates, I had no way of knowing about other lost data or lost calendared events there were.

12. I did not receive any reminder through my database in August of 2006 with respect to the patent maintenance for the '052 Patent. If I had, I could have alerted my father, John E. Davis, to the issue. I did not receive a reminder prior to that date, nor did I receive any reminder through my database system up to the discovery of the original patent and letter in the archived files by my father, John E. Davis in 2009.

13. Accordingly, while I had set up a system to track the maintenance file data on behalf of John E. Davis, my tracking of that date for payment of maintenance fees failed. This loss was unbeknownst to me, because such a date would not have been a common date or a well-known date that I would have remembered and could check on, and it would have occurred as a reminder three years after it had been originally entered.

14. I relied upon my database to remember and track the things I simply cannot remember on my own due to the workload of running two companies and also managing a family of five. At the time, I was also managing my father's affairs, including his financial affairs and business affairs, including handling the patent matters at that time.

15. The ACT database has been a reliable database for me to use to address such important dates and matters. This was why the ACT database was chosen as the mode for tracking the deadline to pay maintenance fees associated with the '052 Patent. The hard drive crash was a mechanical problem, and was not a failure of the ACT database software. Therefore, the software provided a reliable system for tracking important dates.

16. I was careful to make sure that important dates associated with my father's business and financial affairs were entered into my personal database. That is, for such matters, my ACT database became my father's database. Therefore, my use of the ACT database for the patent maintenance fee tracking and reminders is, in effect, my father's database, as he was incapacitated.

17. Mr. Davis would not have been aware of the ACT tracking system that I had put in place. Therefore, he would have believed, through that lack of knowledge, that there was no docketing system in place to track the maintenance fee due dates. However, there was. Pursuant to recent further discussions with my father that revolve around the issue of payment of the maintenance fees after their original due date, I was able to recall for him the steps that were taken, on his behalf, with respect to tracking the maintenance fee due dates for the patent.

18. Because of the hard drive failure in my ACT database and calendar system and the loss of data, including the patent maintenance fee reminder entry, as well as other important date reminders, I was unable to alert my father with respect to the maintenance fees for the '052 Patent. Because my father did not have any original knowledge of having seen or read the original '052 Patent nor the letter from Wood, Herron & Evans, he was also not able to realize that the tracking system that he was using, through me, had lost data and failed to provide a reminder about the maintenance fee for the '052 Patent.

19. Although my personal safeguard had failed in regard to the patent renewal, there was still the letter from the patent lawyer that a reminder notice would be sent to us regarding the renewal of the patent. Even though the original patent was sent to and received at my home address, I never received a reminder notice of the maintenance fees.

20. I was not involved in the patent process, nor am I well-versed in patent law. It is for these reasons that I believe the circumstances regarding the non-renewal of my father's patent were unavoidable.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.

11/18/10  
Date

  
Laura Brumbaugh

Document #1285875

**PETITION TO ACCEPT UNAVOIDABLY DELAYED PAYMENT OF MAINTENANCE FEE IN AN EXPIRED PATENT (37 CFR 1.378(b))**Docket Number (Optional)  
TRIL-05

Mail to: Mail Stop Petition  
 Commissioner for Patents  
 P.O. Box 1450  
 Alexandria VA 22313-1450  
 Fax: (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.

Patent Number: 6,603,052Application Number: 09/865,822Issue Date: 08/05/2003Filing Date: 05/25/2001

**CAUTION:** Maintenance fee (and surcharge, if any) payment must correctly identify: (1) the patent number (or reissue patent number, if a reissue) and (2) the application number of the actual U.S. application (or reissue application) leading to issuance of that patent to ensure the fee(s) is/are associated with the correct patent. 37 CFR 1.366(c) and (d).

**Also complete the following information, if applicable:**

The above-identified patent:

is a reissue of original Patent No. \_\_\_\_\_ original issue date \_\_\_\_\_;  
 original application number \_\_\_\_\_  
 original filing date \_\_\_\_\_

resulted from the entry into the U.S. under 35 U.S.C. 371 of international application \_\_\_\_\_ filed on \_\_\_\_\_.

**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is

(1) being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 OR

(2) transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.

\_\_\_\_\_  
Date\_\_\_\_\_  
Signature\_\_\_\_\_  
Typed or printed name of person signing Certificate

[Page 1 of 4]

This collection of information is required by 37 CFR 1.378(b). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

## 1. SMALL ENTITY

 Patentee claims, or has previously claimed, small entity status. See 37 CFR 1.27

## 2. LOSS OF ENTITLEMENT TO SMALL ENTITY STATUS

 Patentee is no longer entitled to small entity status. See 37 CFR 1.27(g)

## 3. MAINTENANCE FEE (37 CFR 1.20(e)-(g))

The appropriate maintenance fee must be submitted with this petition, unless it was paid earlier.

NOT Small Entity			Small Entity		
Amount	Fee	(Code)	Amount	Fee	(Code)
<input type="checkbox"/> \$ _____	3 1/2 yr fee	(1551)	<input type="checkbox"/> \$ 555.00	3 1/2 yr fee	(2551)
<input type="checkbox"/> \$ _____	7 1/2 yr fee	(1552)	<input type="checkbox"/> \$ _____	7 1/2 yr fee	(2552)
<input type="checkbox"/> \$ _____	11 1/2 yr fee	(1553)	<input type="checkbox"/> \$ _____	11 1/2 yr fee	(2553)

MAINTENANCE FEE BEING SUBMITTED \$ 555.00

## 4. SURCHARGE

The surcharge required by 37 CFR 1.20(i)(1) of \$ 700.00 (Fee Code 1557) must be paid as a condition of accepting unavoidably delayed payment of the maintenance fee.SURCHARGE FEE BEING SUBMITTED \$ 700.00

## 5. MANNER OF PAYMENT

Enclosed is a check for the sum of \$ \_\_\_\_\_

Please charge Deposit Account No. 233000 the sum of \$ 1,255.00 .

Payment by credit card. Form PTO-2038 is attached.

## 6. AUTHORIZATION TO CHARGE ANY FEE DEFICIENCY

The Director is hereby authorized to charge any maintenance fee, surcharge or petition fee deficiency to  
Deposit Account No. 233000

## 7. OVERPAYMENT

As to any overpayment made, please

Credit to Deposit Account No. 233000

OR

Send refund check

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.

## 8. SHOWING

The enclosed statement will show that the delay in timely payment of the maintenance fee was unavoidable since reasonable care was taken to ensure that the maintenance fee would be paid timely and that this petition is being filed promptly after the patentee was notified of, or otherwise became aware of, the expiration of the patent. The statement must enumerate the steps taken to ensure timely payment of the maintenance fee, the date and the manner in which the patentee became aware of the expiration of the patent, and the steps taken to file the petition promptly.

## 9. PETITIONER(S) REQUESTS THAT THE DELAYED PAYMENT OF THE MAINTENANCE FEE BE ACCEPTED AND THE PATENT REINSTATED.

/Kurt A. Summe/

06/29/2010

Date

Signature(s) of Petitioner(s)

Kurt A. Summe, Attorney of Record

36023

Typed or printed name(s)

Registration Number, if applicable

Wood, Herron &amp; Evans, LLP, 441 Vine Street #2700

513-241-2324

Address

Telephone Number

Cincinnati, OH 45202

Address

## ENCLOSURES:

Maintenance Fee Payment

Statement why maintenance fee was not paid timely

Surcharge under 37 CFR 1.20(i)(1) (fee for filing the maintenance fee petition)

Other: Declarations of John E. Davis, Gretchen J. Franck, and Kurt A. Summe in Support of Statement why maintenance fee was not paid timely.

37 CFR 1.378(d) states: "Any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest."

/Kurt A. Summe/

Signature

06/29/2010

Date

Kurt A. Summe, Attorney of Record

Type or printed name

36023

Registration Number, if applicable

**STATEMENT**

(In the space below, please provide the showing of unavoidable delay recited in paragraph 8 above.)

See Attached Filed Document.

*(Please attach additional sheets if additional space is needed)*

## Privacy Act Statement

The **Privacy Act of 1974 (P.L. 93-579)** requires that you be given certain information in connection with your submission of the attached form related to a patent application or patent. Accordingly, pursuant to the requirements of the Act, please be advised that: (1) the general authority for the collection of this information is 35 U.S.C. 2(b)(2); (2) furnishing of the information solicited is voluntary; and (3) the principal purpose for which the information is used by the U.S. Patent and Trademark Office is to process and/or examine your submission related to a patent application or patent. If you do not furnish the requested information, the U.S. Patent and Trademark Office may not be able to process and/or examine your submission, which may result in termination of proceedings or abandonment of the application or expiration of the patent.

The information provided by you in this form will be subject to the following routine uses:

1. The information on this form will be treated confidentially to the extent allowed under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a). Records from this system of records may be disclosed to the Department of Justice to determine whether disclosure of these records is required by the Freedom of Information Act.
2. A record from this system of records may be disclosed, as a routine use, in the course of presenting evidence to a court, magistrate, or administrative tribunal, including disclosures to opposing counsel in the course of settlement negotiations.
3. A record in this system of records may be disclosed, as a routine use, to a Member of Congress submitting a request involving an individual, to whom the record pertains, when the individual has requested assistance from the Member with respect to the subject matter of the record.
4. A record in this system of records may be disclosed, as a routine use, to a contractor of the Agency having need for the information in order to perform a contract. Recipients of information shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m).
5. A record related to an International Application filed under the Patent Cooperation Treaty in this system of records may be disclosed, as a routine use, to the International Bureau of the World Intellectual Property Organization, pursuant to the Patent Cooperation Treaty.
6. A record in this system of records may be disclosed, as a routine use, to another federal agency for purposes of National Security review (35 U.S.C. 181) and for review pursuant to the Atomic Energy Act (42 U.S.C. 218(c)).
7. A record from this system of records may be disclosed, as a routine use, to the Administrator, General Services, or his/her designee, during an inspection of records conducted by GSA as part of that agency's responsibility to recommend improvements in records management practices and programs, under authority of 44 U.S.C. 2904 and 2906. Such disclosure shall be made in accordance with the GSA regulations governing inspection of records for this purpose, and any other relevant (i.e., GSA or Commerce) directive. Such disclosure shall not be used to make determinations about individuals.
8. A record from this system of records may be disclosed, as a routine use, to the public after either publication of the application pursuant to 35 U.S.C. 122(b) or issuance of a patent pursuant to 35 U.S.C. 151. Further, a record may be disclosed, subject to the limitations of 37 CFR 1.14, as a routine use, to the public if the record was filed in an application which became abandoned or in which the proceedings were terminated and which application is referenced by either a published application, an application open to public inspection or an issued patent.
9. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local law enforcement agency, if the USPTO becomes aware of a violation or potential violation of law or regulation.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

November 19, 2010

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

U.S. Patent No. 6,603,052

**SUPPLEMENTAL STATEMENT OF SHOWING THAT THE DELAY IN TIMELY  
PAYMENT OF THE MAINTENANCE FEE FOR THE EXPIRED PATENT WAS  
UNAVOIDABLE, PURSUANT TO 37C.F.R. §1.378(b)**

This Statement of Showing supplements the Original Statement of Showing filed with the original Petition to accept a delay in the payment of the maintenance fee pursuant to 37 C.F.R. §1.378(b) that was filed on June 29, 2010.

That Petition was dismissed pursuant to a Decision on Petition under 37 C.F.R. §1.378(b) mailed September 21, 2010. This renewed Petition, with Supplemental Showing and additional Declarations, is therefore timely filed on [date].

In the Decision dismissing the Petition, Petition's Attorney indicated that the showing was inadequate to establish unavoidable delay. However, as noted, the term unavoidable is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in

relation to their most important business. The inventor and owner of the '052 Patent, John E. Davis, was prudent and careful, and took the necessary and diligent steps to submit payment of the maintenance fee upon actually finding out that a maintenance fee was due for the patent.

In the Decision dismissing the Petition, the issues of Mr. Davis' personal health are indicated as immaterial because it is the lack of any steps in place to pay the fee that caused or contributed to the delay. The Petitioner asserts that it is not submitting the information regarding the health issues to establish that the Petitioner was incapacitated completely from taking action. Rather, the original stroke and health issues are what prevented him from even having knowledge about the maintenance fee issue, or that a maintenance fee was due (Davis Declaration Paragraphs 14-15), and therefore, the inability to take additional steps from the expiration of the patent to the discovery of the original patent document in the archived files was based on the lack of knowledge that anything even had to be done, which was the result of the stroke in 2003.

In the years following the stroke, it was essentially unavoidable that Mr. Davis even knew that he to take any earlier action with respect to the patent from the date of expiration of the patent up until the discovery in the archived files. Certainly, Mr. Davis could not be expected to take action or further steps on an issue that he was not even aware of originally, and had never been aware of (Davis Declaration Paragraph 23). Therefore, the physical condition is what caused the original lack of knowledge, and thus, the requisite and subsequent lack of action regarding payment of the maintenance

fee. This lack of knowledge could not be avoided, as Mr. Davis had a stroke around the time of receiving the original patent, and did not personally remember seeing or handling that original patent or any letter associated with payment of the maintenance fees.

As noted in the Supplemental Davis Declaration, the stroke issue that caused the original failure to know about the maintenance fee and the subsequent mental and cardiac issues that affected John E. Davis from that time to the present date, and affected his efforts to address the maintenance fee delay issue, are real and significant health issues.

Furthermore, the original Petition notes Mr. Davis' acknowledgment that there was not a docketing system in place to track the maintenance fee due date for the patent. However, such an acknowledgment is with respect to any specific actions that Mr. Davis handled himself because, as noted, he had no knowledge that he would even have to set up a docketing system to track maintenance fee due dates because he did not even know about the maintenance fee due date issue to begin with. Again, he would not be expected to act on the issue when he had no knowledge of the issue. That lack of knowledge regarding the maintenance fee issue did not change from the 2003 time frame up until 2009.

However, in further looking into the issue and inquiring about that issue from his daughter, Mr. Davis did, in fact, have a docketing system in place to track the maintenance fee due date, but that docketing/reminder system failed.

More specifically, because Mr. Davis suffered a stroke around the time of payment of the Issue Fee in May, 2003, he could not, and did not, handle the issue of the original patent and the maintenance fee letter (Original Davis Declaration Paragraph 14). This was a significant medical issue that prevented Mr. Davis from handling his business affairs and the affairs associated with the patent (Supplemental Davis Declaration Paragraph 4; Original Davis Declaration Paragraph 14). Accordingly, he turned over his affairs to his daughter, Laura Brumbaugh (Brumbaugh Declaration Paragraph 2).

On Mr. Davis' behalf, Ms. Brumbaugh set up a reminder system in her calendar regarding payment of the maintenance fees. A reminder of August, 2006 to pay the first maintenance fee was entered in her personal calendar. (Brumbaugh Declaration Paragraph 8.) At the time, due to his incapacitation, this calendar and reminder system associated with the maintenance fee for the '052 Patent was the actual docketing and reminder system of the inventor, John E. Davis (Brumbaugh Declaration Paragraph 8; Supplemental Davis Declaration Paragraph 7).

It was absolutely reasonable and prudent for Mr. Davis, in his mental and physical state, to rely upon his daughter, Ms. Brumbaugh, even though he did not know at the time, nor did he remember, the original receipt of the patent and letter therewith. Nor did he know about Ms. Brumbaugh's efforts on his behalf until, through further inquiry, she indicated the steps she had actually taken in her own calendar back in 2003 on his behalf (Original Davis Declaration Paragraph 15; Supplemental Davis Declaration Paragraph 6.) Therefore, while Mr. Davis was incapable of setting up his own docketing

system to track the maintenance fee due date for the patent due to his lack of knowledge about the maintenance fee issue, he reasonably and prudently relied upon his daughter to handle his affairs with regard to the patent matter at the time that the original patent was received. His daughter did indeed set up such a docketing/reminder system for the '052 Patent and maintenance fee deadlines for him. It was a reliable system, as his daughter used it for her businesses as well. Mr. Davis therefore, did have a reminder system in place for paying the maintenance fee.

The docketing system of Mr. Davis, through Ms. Brumbaugh, failed (Brumbaugh Declaration Paragraphs 10-13). This failure was not due to any lack of effort or avoidable circumstance on behalf of either Mr. Davis or Ms. Brumbaugh. Rather, it was a mechanical failure of the hard drive of the computer that ran Ms. Brumbaugh's ACT database that had the data of the reminder date for the maintenance fee in the system. (Brumbaugh Declaration Paragraph 10.) The necessary data for the maintenance fee reminder was lost.

Mr. Davis had no other way of knowing about the maintenance fee date due to his lack of original knowledge as well as the failure of the reminder/docketing system his daughter was maintaining on his behalf due to her earlier assistance in 2003. He had no original knowledge of the maintenance fee issue to even know to take further action, and thus, it could not be avoided that he did not set up his own docketing system.

Furthermore, the docketing/reminder system that John E. Davis had, through his daughter, failed due to a mechanical system failure. It was thus, unavoidable that he did not receive a reminder, because the data appeared to be lost in the mechanical hard drive failure.

Still further, there was no reasonable way that Ms. Brumbaugh could have known what data was lost to remedy the situation (Brumbaugh Declaration Paragraph 11.) A date that was three years away from the 2003 time frame of the system crash would not have been a particular date that Ms. Brumbaugh would reasonably know was missing from the database when the portion of the data was restored. Because of those circumstances, the delay from the expiry of the patent to Mr. Davis' discovery of the original patent in the archived files was unavoidable. There was no other way that Mr. Davis could have addressed that issue.

Mr. Davis has one patent, and he would have no reason to be intimately familiar with the maintenance fee issue of the patent (Original Davis Declaration Paragraph 26). Furthermore, Mr. Davis' daughter, Ms. Brumbaugh, does not have intimate knowledge of the patent process or the maintenance fee issues, but took the necessary steps to docket the dates for payment of the first maintenance fee when she received the original patent (Brumbaugh Declaration Paragraph 20). Accordingly, there is no other way that this delay could have been avoided. The steps taken were certainly reasonable and prudent in the case of ordinary human affairs, as Mr. Davis and Ms. Brumbaugh are individuals and are not associated with a corporation or other entity which handles large numbers of patent properties and various different maintenance fee issues.

Once Mr. Davis discovered the original patent and the maintenance fee issue, he worked diligently to review records, gather the facts, and understand the issues surrounding the event of the delayed payment of the maintenance fee and the

unavoidable circumstances surrounding that delay as well as the ownership issues (Original Davis Declaration). It was necessary to gather the facts and do such a review of old records to even file the original Petition.

There were steps in place to pay the maintenance fee on behalf of Mr. Davis instituted by his daughter (Brumbaugh Declaration Paragraphs 7-9). It was the mechanical failure of the reminder system steps, as well as the lack of Mr. Davis' original knowledge or memory regarding the original patent, that caused the delay, and both of those situations could not be avoided.

With respect to the assignment, Mr. Davis has been able to find and contact the other inventor, Mr. Klonne, to confirm that Mr. Klonne did indeed assign all of his interests and rights to the '052 Patent to Mr. Davis (Klonne Declaration Paragraphs 3-4). Such an assignment certainly addresses the definitions of 37 C.F.R. §3.1, which does not require that such an assignment or transfer be in writing. Furthermore, the reference to 35 U.S.C. §2.61 refers to the fact that the patent shall be assignable by law by an instrument in writing and the effects that it would have with respect to subsequent purchasers regarding the recording of such a written instrument. However, for the purposes associated with payment of the maintenance fees and handling those issue, there is nothing in either 37 C.F.R. §3.1 or 35 U.S.C §2.61 or MPEP §3.01 that prohibits one inventor from orally assigning all the rights, title, and interest to the patent to another inventor that would indeed pass equitable title to the patent. In fact, 35 U.S.C. §2.61 and MPEP §3.01 only deal with issues associated with a written assignment when the assignment is indeed written. As noted in the MPEP and CFR, an

"assignment" is the act of transferring to another the ownership of one's property. For the purposes of patent rights, that is defined as a transfer by a party (Mr. Klonne) of all or part of his rights, title, and interest in a patent. Mr. Klonne transferred the entire ownership to Mr. Davis. (Klonne Declaration Paragraphs 3-4.)

Accordingly, with respect to looking at the issue of unavoidable delay regarding the '052 Patent, it would certainly be reasonable for Mr. Davis to understand and believe that he is the sole owner of the '052 Patent. Furthermore, it would certainly be reasonable for the other inventor, Mr. Klonne, to believe that he did not own the patent any longer, and thus, would not need to do anything further with the '052 Patent. Although the ownership issue had not been memorialized within a written document or recorded at the U.S. Patent Office, ownership had indeed passed based on the understanding of the two parties involved, including Mr. Davis and Mr. Klonne. Therefore, for the purposes of addressing the issue of delayed payment of the maintenance fees, the Patent Office should reasonably recognize and respect the understanding of the two inventors with respect to the patent ownership.

Since the joint inventor Klonne is not an owner of the patent, his actions would not be relevant with respect to the issue of the unavoidable delay in payment of the maintenance fee by Mr. Davis. It is only the circumstances of Mr. Davis' situation and actions as the sole owner of the patent that should be considered.

Mr. Davis reasonably and prudently relied upon other people and calendars in his daily life, and specifically relied upon his daughter, Ms. Brumbaugh, with respect to docketing the maintenance fee due date for the '052 Patent at the time the original

patent was received. Ms. Brumbaugh did indeed docket the date for payment of the maintenance fees. Ms. Brumbaugh's reliable system failed because of a mechanical failure, and the reminder regarding the maintenance fee due date was lost due to a hard drive crash of her computer. Accordingly, Mr. Davis and indeed Ms. Brumbaugh had no way of knowing about the maintenance fee deadline from the time of expiration of the patent up until Mr. Davis' discovery of the original patent document. That lack of knowledge could not be avoided, and it was that lack of knowledge or reminder that caused the unavoidable delay. As such, Mr. Davis had no reasonable chance to take any steps to pay that fee.

Mr. Davis' subsequent diligent efforts to gather all the necessary facts and any documents associated with the delay in payment from the time of the discovery of the original patent up to the filing of the original Petition were certainly reasonable in light of his mental and physical health issues.

Furthermore, it was also reasonable and prudent to not rely upon Mr. Klonne for any efforts in payment of the maintenance fee, as Mr. Klonne did not have an ownership of the patent. Mr. Davis is the sole owner of the patent.

Accordingly, the Petitioner submits that the delay in the timely payment of the maintenance fee was truly unavoidable pursuant to 37 C.F.R. §1.378(b), and the necessary showing herein establishes that unavoidable delay suitable for a grantable Petition to accept the delay in timely payment and to reinstate the patent. This Petition

is timely filed on November 19, 2010, along with the necessary Petition fee. If any additional fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to Deposit Account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.



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Kurt A. Summe  
Registration No. 36023

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Document #1285944

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Serial No.: 09/865,822  
Filed: 05/25/2001  
Examiner: Zec, Flip  
Confirmation No.: 5846  
Art Unit: 3744  
Applicants: John E. Davis, et al.  
Title: FLUID ABSORBENT ARTICLE FOR SURGICAL USE  
Atty. Doc.: TRIL-05

Cincinnati, Ohio 45202

MAIL STOP  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF TIMOTHY P. KLOINNE**

Timothy P. Klonne, being first duly cautioned and sworn, states as follows:

1. My name is Timothy P. Klonne. I am one of the inventors for U.S. Patent No. 6,603,052. The other inventor is John E. Davis, who was a partner with my in an Ohio corporation called Tollamco, Corp. That corporation did business at 7195 East Kemper Road, and 7131 East Kemper Road in Cincinnati, Ohio 45209.

2. In the time frame of August, 2003, John E. Davis and I were addressing issues associated with the defunct Tollamco, Corp. Pursuant to wrapping up that business, Mr. Davis took possession of the corporate files. I had nothing further to do with the business or business remnants of the defunct Tollamco, Corp.

3. Pursuant to my getting out of that business, some time in the August, 2003 time frame, I had a telephone conversation with Mr. Davis, during which time we discussed the '052 Patent and ownership thereof. I assigned all of my rights, title and interest and ownership and privileges to the '052 Patent to Mr. Davis at that time.

4. I do not have any ownership interest in the patent, and I have not done anything further with the '052 Patent. Mr. Davis is the sole owner of the '052 Patent.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the issued Patent referenced.

Further Declarant sayeth naught.

11/17/2010  
Date

  
\_\_\_\_\_  
Timothy P. Klonne

Document #1285884

## Electronic Patent Application Fee Transmittal

<b>Application Number:</b>	09865822			
<b>Filing Date:</b>	25-May-2001			
<b>Title of Invention:</b>	FLUID ABSORBENT ARTICLE FOR SURGICAL USE			
<b>First Named Inventor/Applicant Name:</b>	John E. Davis			
<b>Filer:</b>	Kurt A. Summe/Lorraine Daniel			
<b>Attorney Docket Number:</b>	TRIL- 05/119			
Filed as Small Entity				
<b>Utility under 35 USC 111(a) Filing Fees</b>				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
<b>Basic Filing:</b>				
<b>Pages:</b>				
<b>Claims:</b>				
<b>Miscellaneous-Filing:</b>				
<b>Petition:</b>				
Petition fee- 37 CFR 1.17(f) (Group I)	1462	1	400	400
<b>Patent-Appeals-and-Interference:</b>				
<b>Post-Allowance-and-Post-Issuance:</b>				
<b>Extension-of-Time:</b>				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
<b>Miscellaneous:</b>				
<b>Total in USD (\$)</b>				<b>400</b>